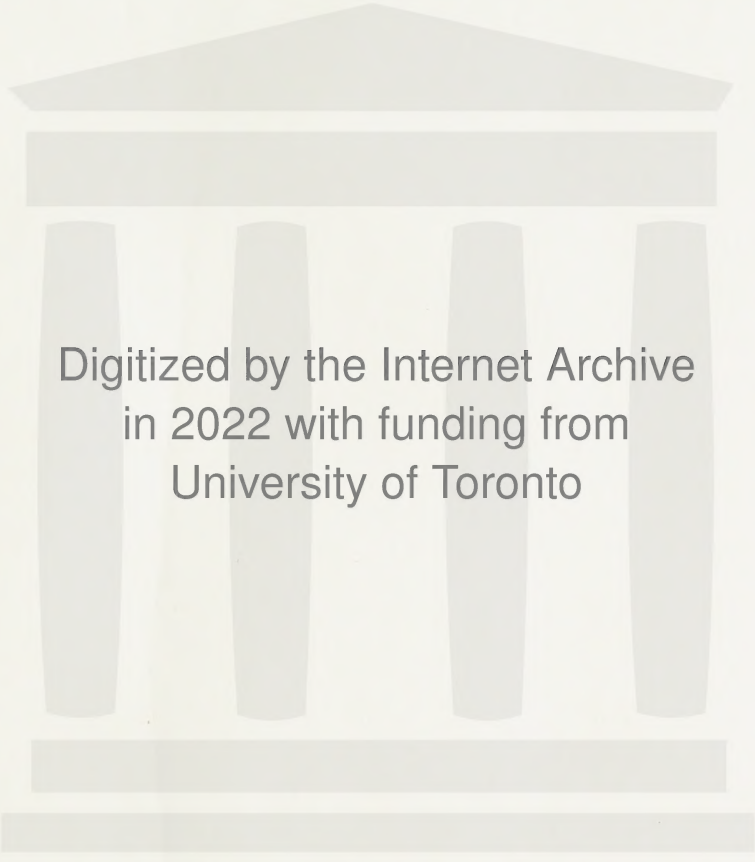

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Legislative Assembly of Ontario

Standing Committee on Administration of Justice

Estimates, Ministry of the Attorney General

First Session, 33rd Parliament
Wednesday, November 6, 1985

Speaker: Honourable H. A. Edighoffer
Clerk of the House: R. G. Lewis, QC

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, November 6, 1985

The committee met at 10:08 a.m. in committee room 2.

ESTIMATES, MINISTRY OF THE ATTORNEY GENERAL

Mr. Chairman: There is representation from all parties; so I believe we can get under way. The order of business for today is the estimates of the Attorney General (Mr. Scott). We again welcome him to our committee. We have recently dealt with one of his bills and we look forward to dealing with his estimates.

We are going to get under way initially with vote 1601. Before getting into that, I believe the Attorney General has a rather modest and brief statement he wants to share with all of you here assembled. The Attorney General has the floor.

Hon. Mr. Scott: You are wrong so soon.

Mr. Chairman and members of the committee, I am glad to be here this morning. These are my first estimates as Attorney General and this is my first participation in this process as a member of the Legislative Assembly. I am looking forward to the kind of dialogue I am sure will develop.

I am looking forward to it, I hasten to add, with some curiosity about what it will involve. Accountability, which this committee represents, is the foundation of the system. I am sure that during the next 16 hours you, my colleagues, will have useful and important suggestions as well as criticisms to make about the administration of justice as my ministry implements or formulates its programs and policies.

If it be necessary to show what kind of role the initiative of an individual member can play in this process, I am reminded of an observation made by Mr. McMurtry that the intervention of the member for Prince Edward-Lennox (Mr. Taylor), who is here this morning as a substitute, in the regulations relating to the legal aid clinics was critical in assuring that those clinics got off the ground and got going. That shows the important role that members of the Legislature can play in this committee and outside it in making our work better and more useful in the interests of our fellow citizens.

The second thing I should say is that in the short time I have been in the ministry–I think this was written for me by my staff–I have been highly impressed by the dedication and professionalism of the staff and of the women's directorate. I honestly confide in you that the level of professionalism and dedication was much higher than any of us had any right to expect. While I will not accept in advance personal responsibility for all the faults that may be found in these estimates, I want to testify that there is no lack of desire for openness and no lack of evidence of dedication on the part of our staff.

I want to deal with a number of specific items that may be of public or legislative concern, but before doing so, I want to emphasize that the Ministry of the Attorney General is not responsible only for the application of criminal and civil law, it also ensures that the administration of public affairs is in accordance with the law. Thus, the Attorney General superintends all matters connected with the administration of justice in Ontario.

This ranges all the way from providing adequate court facilities to the staffing, training and recruiting of personnel and to the drafting and revising of laws that affect all of us every day. That is where the bulk of the money goes and, in my view, it is money that is well and essentially spent.

If the members will allow me, I would like to begin–and I think this is traditional–by paying tribute to two distinguished members of the profession who died during the past year.

The first is Chief Justice McRuer, one of the most distinguished figures–I believe the most distinguished figure–in Canadian legal history, who died last month at the age of 95. He had an accomplished legal career in service to this province that will ensure his place in history. Mr. Justice McRuer conducted one of the most important royal commissions in our history when in 1964 he carried out the one-man Royal Commission Inquiry into Civil Rights and provincial laws and regulations. He also served the province as chairman of the Ontario Law Reform Commission and left an indelible mark on that important institution.

The second is, in a sense, more poignant, and that is to remind you of the tragic death of Jim Renwick, a member of this Legislature, which occurred last November. He was well known to me and to my colleagues on the committee who have served in the House before. There is no

doubt that he was one of the assembly's most distinguished and valuable members. For 20 years this gentle, civilized, compassionate man served the province with real dedication that inspired his party, constituents and his friends in other parties.

He was a patriot and community builder and a wise counsel to a succession of Attorneys General, often through the auspices and under the aegis of this committee. I regret I will not have the benefit of Jim's advice. I will not even have the benefit of being hoist periodically with the petards he wielded so effectively, as I know from reading Hansard. His friends and admirers can take comfort in the immense contribution he has made to the life of our province.

There are a number of areas of interest to the members of the committee. I want to concentrate now on some issues I see as particularly important to the administration of justice. I want also to discuss a number of initiatives that have been taken since June 26 when I was sworn in.

We will be dealing with the issues of the women's directorate separately, and I will speak to those issues at that time. I am encouraged by progress in the area of affirmative action. As you are aware, the government-wide goal of the affirmative action program directed ministries to work towards achieving by the year 2000 a minimum of 30 per cent female representation in all job classifications.

This ministry's affirmative action program encourages branch directors to provide on-the-job training that would contribute to the advancement of women through acting appointments, secondments and special assignments. Through our on-the-job-training report, it was found that 145 women within the ministry, six per cent of female staff, received on-the-job training of two months or longer. Of these, 45 assignments were viewed as developmental.

There was an increase in the percentage of women within administrative, professional and managerial categories and modules. As of April 1985, the average salary for women was about $23,000 compared to an average $32,297 for men. This, however, represents a two per cent decrease in the wage gap from the previous year. It has decreased by 14 per cent over 10 years compared to six per cent government-wide. Women in the ministry now earn 74 per cent of men's salaries.

The 15 per cent increase in female lawyers during the last 10 years is a real achievement. The dramatic increase in this group from seven per cent to 22 per cent is a result of the ministry's commitment to achieving results. The hiring and promotion targets for the entire group have been met or exceeded consistently. In 1984-85, 45 assignments for women were planned and accomplished by branch directors. In this fiscal year, 73 assignments have been planned and in the first six months 58 have been completed.

I am pleased to announce also that the ministry has initiated maternity leave for order-in-council appointments. Women had previously been exempted in this area. After consideration of the steadily increasing numbers of women within order-in-council appointments such as judges, sheriffs and court registrars, it was decided that these women should receive an equivalent maternity-leave compensation provided solely by the ministry. One female assistant crown attorney has so far been granted this benefit. Obviously, we have a distance to go yet in this area, but I am encouraged that we are moving in the right direction and at a faster pace than many.

A number of initiatives have been undertaken already during the short life of this government, but none is more important than the freedom-of-information legislation, opening windows to government that have traditionally been closed. As I said when introducing this legislation, let there be no doubt that, notwithstanding the difficulties the concepts of freedom of information and the protection of individual privacy may pose, they are fundamental principles for the government.

10:20 a.m.

The freedom-of-information and privacy legislation is based on four principles:

1. The public has a legal right of access to information in government records.

2. Government can refuse to grant access, but its authority to do so is limited precisely to the circumstances described in the bill.

3. Decisions by a government institution to refuse access can be reviewed by the information commissioner for a final decision.

4. Individuals have a legal right to the protection of personal information, as defined in the act.

All of you now have had a chance to study the proposed Bill 34.

Part I designates the responsible minister and establishes the office of the information and privacy commissioner; part II establishes a right of access to government information subject to specific exemptions; part III regulates the collection, use and disposal of personal information; part IV establishes an appeal process; and part V provides for fees and other general matters.

The bill is based on the model bill introduced by our former colleague James Breithaupt, who is present in the room today and who is now the distinguished chairman of the Ontario Law Reform Commission. His bill was based on recommendations made by a commission of which Dr. Carlton Williams, president of the University of Western Ontario, was chairman.

I am sure there will be many detailed arguments ahead as the bill is debated in the Legislature and in committee. We can disagree in good faith on how to strike a proper balance in specific cases. I therefore look forward to your input at this stage as we proceed with what is, in Ontario, historic legislation.

My own belief is that an open government is a responsive government, better able to respond to the needs of the public and better able to earn the trust of our citizens. What we are seeking is another mechanism to strengthen the free and democratic government of our society, to which all of us in Ontario are committed.

As I have said before, we intend to listen carefully to every reasonable suggestion to make the bill better. However, I know most of you will agree this is a bill that is long overdue, and we will be acting as expeditiously as possible to make it the law.

I want the members of this committee to know that the government also regards the Family Law Reform Act as of the utmost on the priority list. This proposed act is the culmination of a process which began more than a decade ago. Extensive public consultations on matrimonial property reform led to the Family Law Reform Act of 1978. Now, in the middle of this decade, it is time that legislation was updated.

Under the new law, which is currently before the committee, the value of all property acquired by spouses during their marriage, other than gifts, inheritances and other very limited exceptions, will be shared equally between the spouses in the event of marriage breakdown. Any increase in the value of property that is exempt from sharing, or any income from it during the marriage, will also be shared equally by the spouses on a division of assets.

The bill also recognizes the unique problems that can be created by professional partnerships, small businesses and farms. It recognizes that the division of assets such as those, following a marriage breakdown, could pose unique economic hardship. Accordingly, the bill will direct a court to accomplish the financial settlement contemplated by the bill so as not to interfere with the operations or economic viability of a business or farm.

The court will have a variety of remedies available to it including, as an example, time payments over a period as long as 10 years.

Much of the approach of the 1978 Family Law Reform Act to providing special protections for the matrimonial home has been retained in the new bill. So far as a division of matrimonial property is concerned, the matrimonial home is always shareable, regardless of when or how it is acquired.

We will also be proceeding with other legislation to enhance the human rights of our citizens and further ensure equality. The Equality Rights Statute Law Amendment Act, currently before the House, is an example. This bill will help to bring Ontario statutes into greater conformity with both the equality rights guaranteed in section 15 of the Canadian Charter of Rights and Freedoms and the Ontario Human Rights Code. Most of the amendments in the bill deal with statutes which discriminate on the basis of age, sex, religion and marital status.

If we are to give any real clout to the rights guaranteed in section 15, we must broaden the interpretation of equality and not treat it in a narrow or technical way. We do not expect this will be an easy undertaking, but it is one that is necessary if we are to ensure the equal rights of all our people. The government has also on a number of occasions announced its intention to promote equality through a variety of other measures.

Pension reforms will be introduced to eliminate sex-based mortality tables. We have already announced funding to give financial assistance to women who wish to bring court cases to enforce their rights to equality guaranteed by section 15.

We will also be introducing legislation to ensure equal pay for work of equal value. I would remind you that there will be additions to Bill 7 that will include repeal of subsection 19(2) of the Human Rights Code. This provision, which allows sex discrimination in sports activities and prevents a person discriminated against in that activity from making a complaint to the Ontario Human Rights Commission, in my opinion, has no place in modern Ontario.

I refer to these initiatives because they are part of the legislative package of the Ministry of the Attorney General designed to ensure equality.

Turning now to another subject, I am sure members of the committee share my concern over the continuing tragedies created by drinking drivers. It is estimated that alcohol plays a

contributory factor in 50 per cent of all fatal traffic accidents and 30 per cent of all personal-injury accidents.

In 1984, more than 550 persons were killed and 27,000 persons were injured in accidents where alcohol was a factor. Over and above the human suffering for thousands of families, these accidents cost the people of Ontario more than $200 million. Within the ministry, the drinking-driving countermeasures office was set up to help focus on the problem.

While there is still much to do and much will be done, it seems to me that real progress has been made over recent years in reducing the carnage to some extent. The long-term trend in drinking-driving fatalities has been downward, and that is a hopeful and positive sign. Between 1981 and 1984, alcohol involvement in fatally injured drivers declined by approximately 10 per cent. This has occurred despite increases in both the number of licensed drivers and the kilometres driven.

Perhaps the most impressive indication of progress can be found in the study that was done for my ministry and the Ministry of Transportation and Communications and announced earlier this year. This study looked at Ontario single-vehicle driver fatality data during the months of December and January over a 12-year period. In recent years, those months have been the months when both public education and enforcement campaigns have been most pronounced.

While drinking-driving death rates for December-January had remained constant for over a decade, the figures plummeted drastically in the past two years, from a 10-year average of more than 30 deaths to a figure close to 12 deaths. Furthermore, the number of fatally injured drivers who had been drinking heavily–that is, at twice the legal limit or more–fell to unprecedented low levels in both years in the study period.

What this tells us is clearer in percentage terms. For 10 years, almost 44 per cent of drivers who were fatally injured in December and January had blood alcohol concentrations over the legal limit. In the past two years, this figure fell to an average of 22 per cent. Researchers are convinced that this represents a real change in behaviour patterns, and not just a statistical artefact.

Statistics, however, are only part of the story. Because of the concerns about drinking and driving, "happy hours" have been terminated, stiffer penalties have been sought in the courts and amendments to the Criminal Code are to be proclaimed shortly. We have seen increasingly intensive enforcement activity and a move by many police forces to fingerprint and photograph impaired drivers.

10:30 a.m.

Speaking of enforcement, I was pleased with the Court of Appeal's recent comments regarding the sentencing of impaired and drunken drivers. The judgement said, "The sentence should be such as to make it very much less attractive for the drinker to get behind the wheel after drinking." That is a social policy I am sure all members of this committee endorse.

Associate Chief Justice Bert MacKinnon wrote that, in his view, sentences for the so-called lesser offences should be increased. I concur with that view. Increasing minimum sentences through legislation is one of the options currently under consideration by the government as part of a wide variety of new initiatives. We hope to be able to make an announcement very shortly.

Strict enforcement is only part of the answer. We have to change public attitudes, to convince all our citizens that drinking and driving is not only dangerous but is also not socially acceptable. That is why I am heartened and deeply grateful for the widespread voluntary effort which has gone into the fight against drinking and driving. More than 70 communities in Ontario have either set up local drinking-driving committees or have indicated their intention to do so.

These communities have sponsored an enormous range of local activities. These kinds of activities have a special meaning because they are carried out by individuals known personally to many others in the community. They have been joined by a whole range of voluntary and business organizations and by the media, which have given the issue a continuing high profile. Our countermeasures office is continuing to provide technical support and resources to these communities.

There is one other positive sign which deserves mention. This past summer the ministry, in co-operation with youth-oriented radio stations, to which I am sure all members pay close attention, sponsored a pilot window-decal campaign in five Ontario cities: London, Toronto, Peterborough, Kingston and Ottawa. By placing the decals in automobile windows and other places, thousands of citizens have chosen to bear public witness to their concern about drinking and driving.

I have cited these activities not with the desire to catalogue achievements, but rather to show

that government leadership can galvanize the community and, with the assistance of dedicated citizens, can get results. Groups such as People to Reduce Impaired Driving Everywhere, Mothers Against Drunk Driving, Against Drunk Driving and Students Against Drunk Driving provide invaluable and important leadership to their fellow citizens.

Ultimately, the impact is not measured in the number of committees established or the number of new laws created, but rather in reductions in deaths and injuries on the roads. We are now starting to see these reductions. The challenge before us is to maintain the momentum in imaginative ways and to surpass the recent accomplishments.

To respond to this challenge, we will be reinforcing the drinking-driving countermeasures office in the ministry. We will also be looking to voluntary and business organizations to help us mount an even greater effort. You will be hearing specific proposals over the next few months.

The concern and support of the public on drinking and driving will continue to be critical to our efforts. We expect that support to continue. A Goldfarb survey earlier this year found that drinking and driving has become the number one social and moral concern of Canadians. For me, it means it is time to intensify our efforts since the public climate has been created where more can be done.

On another matter, I am pleased to advise the committee that we now have a new official guardian, Mr. Wilson A. McTavish, who brings to the office a perspective derived from many years in private practice. We were fortunate in being able to attract such a distinguished and respected member of the profession to this important post.

Mr. McTavish has already put in motion a number of initiatives which are directed towards ensuring that the official guardian's operation continues to meet contemporary expectations relating to the safeguarding of the rights and best interests of children.

First, Mr. McTavish has established a permanent committee comprising members of his office and the family law section of the Canadian Bar Association. The committee functions as an objective body examining the role, jurisdiction and relevancy of the official guardian's office, particularly in child welfare matters and custody access cases.

The child representation program of the official guardian has been enormously important in ensuring that the child's voice is clearly and forcefully heard in proceedings under the Child Welfare Act. With the recent coming into force of the Child and Family Services Act, we will continue to carry out this vital function of protecting the interests of children in the court system.

I would like to turn now to the subject of legal aid. Obviously, one of the most pressing legal aid issues concerns the tariff. I accept, and I do not think anyone here can seriously dispute, that a significant tariff increase is urgently needed. The tariff is now lower in real dollar terms than it was in 1967. This is simply not acceptable. It places an inappropriate burden on members of the legal profession who accept legal aid certificates. They and they alone, those who accept certificates, carry the entire profession's obligation to ensure that legal services are available to all of the public.

While not all of my legal colleagues agree with me, I am firmly of the view that the legal profession as a whole has an obligation to make its services available to everyone.

We in the Legislature have given the legal profession a monopoly over services which in today's society can reasonably be classified as essential services. We have also granted to the lawyers themselves the powers to regulate and govern themselves and the profession.

In my view, it follows from this that the professional must ensure that legal serices are available to everyone who needs them. Because of the extent of the need and the cost of making services available, the government since 1967 has agreed to pay the vast majority of the cost associated with this professional obligation, but that does not mean the obligation is only that of the government, nor that the government should pay the entire cost.

There is no doubt that the existing level of the legal aid tariff is creating difficulties for persons needing and seeking legal aid. Regrettably, we have inherited a problem which can be traced to the lack of regular tariff increases in the past. This brings us today to a position where simply trying to catch up with the previous rate of inflation produces such an enormous percentage increase, 111 per cent, that members of the public can be expected to be at least sceptical, if not entirely disapproving, of an increase of that magnitude. None the less, we have the problem and we have to face it.

I endeavoured to do so in an offer I made to the treasurer of the law society some weeks ago. My own discussions with lawyers in many parts of

the province indicate there is more support for the proposal I made than is widely known. This is what I proposed to the treasurer of the law society:

An immediate 60 per cent increase to the tariff; a reduction in the amount now contributed to legal aid by the legal profession; a sharing of the profession's contribution over the profession as a whole, rather than having it solely borne by lawyers who actually do legal aid.

The central feature of this offer which has been overlooked by many people is that the profession's contribution, now 25 per cent, would be reduced rather than increased. As members will know, all legal aid accounts are reduced by 25 per cent in order to reflect the profession's contribution to legal aid. This has been an integral part of legal aid from the beginning. It means that lawyers who actually do legal aid work contributed just under $11 million to the cost of legal aid.

Under my proposal, the profession as a whole would be asked to contribute a total of only $8 million. This reduced level of contribution would be paid by the entire profession, resulting in an annual cost of roughly $470 per member. This would likely be tax deductible, bringing the real cost even lower.

10:40 a.m.

Under my proposal, lawyers actually serving the public by taking legal aid certificates would be paid 60 per cent more. Every member of the legal profession would contribute to the support of the legal aid plan by paying, in after-tax dollars, somewhere between $250 and $400.

I am still convinced this is a reasonable solution to the present difficulties faced by the legal aid plan. I regret the legal profession as a whole has not had an opportunity to reflect on and respond to the precise terms of my offer. I intend to continue my discussion with the law society with a view to resolving this issue. Pending those discussions, it is my hope we will be able to increase the tariff by more than a nominal amount this year as an indication of our good faith and in recognition of the depth of the problem.

However, let us be realistic. Some resolution of the profession's contribution issue will be required before increases of the size we have been discussing can be contemplated. I look forward particularly to the thoughts of members of this committee on this important and delicate issue.

Still in the field of legal aid, some committee members may know I was counsel to the Osler task force on legal aid which reported to Mr. McMurtry in 1974. One of the particularly significant recommendations of that committee involved the establishment of community legal aid clinics.

I am delighted to note that clinics have grown from seven in 1975 with a budget of less than $700,000 to 51 in 1985 with a budget of nearly $12 million. This is a tremendous record of growth, given the economic climate that has prevailed. It is a growth which has seen expansion throughout the province, which has continued at a steady pace and which I hope to see continue.

The Law Society of Upper Canada, having been knocked in the previous pages, is to be commended for the way in which it has built the clinic system, notwithstanding the resistance from time to time of significant members of the profession. There is no doubt in my mind that the community legal aid clinics play a vital role in the administration of justice. They take the law to the people and they help ensure the most disadvantaged among us feel they are human beings with legal rights which can be protected.

The clinics help the disadvantaged join together and they help make the voice of the disadvantaged heard in government. They play a vital role in keeping our system of government responsive to the interest of people who traditionally as individuals have had very limited ways of making their views known.

In addition, on a daily basis and in a variety of matters which may seem mundane to some, the clinics represent individuals in their relationships with courts and with the often bewildering array of administrative boards and agencies which so often affect our lives.

While clinics will frequently disturb the complacent and the powerful, including many in government and many in my profession, the resulting unpopularity in those circles must not be allowed to inhibit their work. It behooves all of us as legislators to remain vigilant in looking after the rights of the clinics as they, in turn, look after the rights of their clients.

I hope we will not yield to the pressure groups which would have us curb the clinics in order that their own interests could continue unchecked. We must always examine with considerable care the claims of those who seek to curtail clinic activities, in order to be sure that self-interest is not behind those claims.

It should be remembered that clinics operate within the context of a regulation under the Legal Aid Act. I have already made reference to Mr.

Taylor's role in that matter. In my view, that regulation draws an appropriate line around the activities of the clinics. It requires them to devote their efforts to the interests of the most disadvantaged, but it does not restrict them to a narrow case-by-case approach. Indeed, it encourages clinics to promote the legal welfare of their community and to take an active role in using the legal and legislative systems to gain greater rights for the groups they represent.

One inevitable source of tension under the regulation, to which some attention will no doubt be directed, is the existence of a committee to superintend the funding of the clinics. The committee, which reports to the convocation of the Law Society of Upper Canada, has overall responsibility for the effective management of the substantial amount of public funds provided for community legal aid clinics.

I know of no system, and hope to see none, in which the funded do not do not seek the greatest possible autonomy from the funder. That is human nature, and it will be with us as long as clinics are funded out of public moneys. In the clinic system, the present system allows a tremendous amount of local autonomy in the matters which, in my view, are important.

Clinics are free to determine which kinds of poverty law cases they will take and how they will manage them. It is for each local clinic, governed by a community board of directors, to determine whether it will concentrate on welfare matters, immigration matters or any other area of the law in which the poor are clients. There are no directives from above dealing with case selection or local priorities.

Central direction comes rather on matters affecting the administration of public funds. This concerns basic fiscal good management, as well as ensuring that benefits and other personnel matters are in line with generally accepted standards. None of this, in my view, undermines the autonomy of the clinics in what is really important, that is, determining which legal problems are of greatest importance to the local community and getting on with attacking those problems.

In another area, the Ministry of the Attorney General has consistently shown a strong commitment to ensuring a permanent and official status for the French language in the courts. This commitment will continue to be a hallmark of our operations and it will be further strengthened. In this important initiative, we have the benefit of advice from an eminent group of counsel constituted as an advisory committee on French-language services.

With the advisory committee's help, we shall be taking steps to ensure there are no obstacles to the access of courts in the French language in Ontario. We want all francophones to be encouraged to feel comfortable in using French before the courts.

The area of statute translation is also under review. The purpose here is to ensure this program is given a priority in keeping with the status of the French language as an official language of our courts.

It should be recorded that, just last week, we in this committee completed our consideration of Bill 14, the Enforcement of Support and Custody Order Act. This is the first bill to make it through committee in both official languages. As members know, this means the French version will be an equally authentic text. Unlike translated statutes, the English text will not be definitive. This is a historic event and one I look forward to combining this session with the Family Law Reform Act and the Change of Name Act.

The Courts of Justice Act and regulations dealing with the French language are also under review. With the recommendations of our advisory committee, we will bring forward changes that facilitate the use of French.

C'est enfin l'heure d'affirmer que l'époque de l'étapisme est revolue. Le droit à l'usage du français devant les tribunaux fait désormais et pour toujours partie de notre droit. Nous nous devons d'enlever tout obstacle a l'exercise de ce droit afin que notre système judiciare puisse se dire tout à fait bilingue. Nous allons procéder à terminer ce qui reste à faire au niveau d'infrastruture et de la procédure, parce qu'il s'agit d'un droit qu'il faut respecter.

While we will be dealing with native issues separately, there is a particular initiative within the aegis of the ministry which I would like to address here. I am pleased with the implementation of the Ontario native justice of the peace program. The mandate of the program is to encourage and enable native persons to play an expanded decision-making role in the administration of justice by serving as justices of the peace.

The primary purpose of the program is to promote the appointment of justices of the peace of native ancestry in areas of the province where high numbers of aboriginal people are residing or appearing before the courts. Native justices of the peace are assigned responsibilities which

utilize their cultural understanding, language skills and life experience.

10:50 a.m.

The goals of the program, an important and innovative one, are an enhanced sensitivity in the courts to the distinctive cultural, legal and socioeconomic circumstances of aboriginal people; an improved understanding of their communities' methods of promoting harmony among residents; a greater understanding of court proceedings among native accused persons, victims and native community residents; an increased sense of involvement in the justice system among native people; an improvement in the efficiency and effectiveness of the administration of justice in remote native communities; a greater appreciation and confidence among native communities that the justice system provides for equal access to, equal rights before and equal protection from the courts; an increased knowledge of the justice system among native individuals and communities through public education activities, and an eventual reduction in the number of native people involved as defendants in the youth and adult justice systems.

However, it should be stressed, and there should be no mistaking it, that when native justices of the peace are on duty, they handle, in accordance with their training and levels of authority, all matters which come before them, regardless of the race, language or cultural background of the accused. This program is off to a promising beginning, and I intend to see that it is expanded.

Moving to the area of race relations, I am pleased to announce that this government will have a cabinet committee on race relations, of which I will be chairman. The previous government had such a committee. We are convinced that the central importance of race relations to the future of this province demonstrates a continuing need. I can assure the committee that this cabinet committee will be an active one. I expect that in the very near future we will have proposals for cabinet in relation to the appointment of visible minorities to agencies, boards and commissions and in relation to concrete measures to ensure equal opportunity in the public service for visible minorities.

The report of the task force on race relations and publicly assisted housing has just now been made available to us, and we will be acting on it. We will not hesitate to tackle the tough problems in this committee. We will be moving immediately to address a number of areas of government activity in which race relations problems have been identified, but have not yet been acted upon. Again, in that process we will be looking for the advice and guidance of the community.

It will be my intention as chairman of the cabinet committee on race relations to be fully available to interested groups and individuals. We want to ensure that we are fully aware of the needs and concerns of the visible minority communities in Ontario. We also want to ensure that all necessary and appropriate measures are in place to guarantee that the evil of racism does not put barriers in the paths of visible minorities in this province.

I would like to turn briefly now to another subject, which I know is of interest to members of this committee, and that is the area of victim assistance. The Ontario Criminal Injuries Compensation Board has been highly acclaimed for its effectiveness and dedication to the important principle that innocent victims of violent crime should receive compensation. Adherence to that principle continues with the board, now under the leadership of Mrs. Margaret Scrivener, a former member of this assembly.

A common lament of all the compensation boards is that only a low percentage of eligible claimants ever get around to making their applications. Ontario's board has received recognition and acclaim for its comprehensive program on the problem of educating the public. Posters and brochures are displayed in hospital wards and lounges across the province. The police are provided with wallet-sized cards to distribute to victims informing them of their right to apply and how to proceed in the matter. Even though the practical difficulties of effectively educating the public may be great, the board has enjoyed considerable success in this area and should be congratulated.

Although the board has dispensed millions in compensation payments, we believe the time has come to assess the adequacy of payments available to victims of crime. I would be interested to hear the views of members of the committee on this subject.

The ministry continues in its commitment to assist victims and witnesses of crime. The ministry recognizes the need for improving the services which are available to these important participants in the criminal justice process. Because of the serious nature of domestic assault cases, together with the time necessary for the preparation of these cases, the ministry has identified and trained a crown attorney or assistant crown attorney in each office about the

complexities inherent in the prosecution of domestic assault charges.

In July 1984, approximately 55 crown attorneys were identified for participation in this program. These designated specialists in domestic assault prosecutions participated in training sessions, in which information was presented about the psychological and legal impact of this kind of assault. The program has proved to be a valuable asset to the work of this ministry in combating this serious problem.

To respond more effectively to the general needs of victims and witnesses, officials of the ministry are currently engaged in reviewing the potential service delivery models. The required funding for the development and implementation of a program that would serve each judicial district in Ontario is also being looked at. A program of this type would assist the crown attorneys in their efforts to provide more relevant and complete information to victims and witnesses on the operation of the criminal justice system and local social service agencies.

It is anticipated that this province-wide program would provide valuable assistance to victims and witnesses through addressing specific requests for information and assistance and co-ordination of existing community resources.

I would also like to pay tribute this morning to Mr. Sidney Linden, a fine lawyer and community servant, who stepped down recently as the first public complaints commissioner for the Metropolitan Toronto Police. Sidney Linden played a key role in drafting the legislation that set up a civilian complaints procedure for Metropolitan Toronto and as the first commissioner, served in a fashion that earned him respect from all sectors of the community.

Thanks to Mr. Linden and his staff, great strides have been made in bringing a greater amount of fairness into the process. Equally as important is that the system has come to be perceived as more open and more fair.

I would add that in my opinion the Metropolitan Toronto Police also deserve a great amount of credit for making the system work. Chief Jack Marks and, before him, Jack Ackroyd, with their willingness to co-operate in this important initiative, were instrumental in making it a success. I am sure our new commissioner, Judge Clare Lewis, will continue these initiatives in co-operation with the Metropolitan Toronto Police force and the Metropolitan Board of Commissioners of Police.

The system has worked well in Metro and we are exploring the possibilities of expanding the complaints commission process to other areas of the province. At present, my thinking is that the public complaints program could be expanded to other municipalities that wish to participate in it. It may be that the voluntary nature of participation is critical, as it has been in Metro, to its initial successes.

My ministry's total estimated expenditures for this fiscal year total $281.3 million. The actual breakdown of expenditures is available to the members in the material provided to them. It represents about one cent of every tax dollar spent, which means in my opinion we are getting a pretty good return for our investment.

Mr. Warner: Especially the minister's salary.

Hon. Mr. Scott: Especially the minister's salary.

That concludes my opening remarks. I want to thank my colleagues for their patient attention.

Mr. Chairman: Thank you very much. We appreciate your comments and your overview of the ministry's activities. At this point we will turn to the official critics of the other two parties. We will begin that response on the part of Mr. O'Connor, representing the Conservative Party.

Mr. O'Connor: Thank you very much. I appreciate this opportunity to make some general remarks on the Attorney General's very complete, thorough statement of overview of his ministerial responsibilities.

11 a.m.

May I commence by congratulating the Attorney General on his appointment to that position and to his assumption of considerable responsibilities on behalf of his party and on behalf of the people of Ontario.

He comes to us with the reputation of being a most distinguished lawyer, having practised in the Court of Appeal and as counsel to a number of commissions and boards and having had involvement in some of the real issues of the day in the past several years. One which comes to mind is the baby deaths at the Hospital for Sick Children. He comes to us with a distinguished background. We welcome that. I think the people of Ontario may well be fortunate that he has chosen to direct his considerable skills and ability to the public service.

Ms. Fish: I will add the "but."

Mr. O'Connor: Rest assured, there are considerable "buts" and "howevers" to follow throughout my statement.

Hon. Mr. Scott: I think it is fine so far.

Mr. Taylor: If you would only embellish it a bit.

Mr. O'Connor: Since the summer the Attorney General has literally inundated us with announcements on a wide variety of issues, some dealing with his responsibilities as Attorney General, others with his responsibilities as minister responsible for women's issues. Some were of a necessary housekeeping type, amendments to existing legislation. Unfortunately, however, I would suggest and argue others have not been so well thought out.

It is easy to make announcements. It is another matter to follow through with the necessary legislation to bring about what he sees as necessary changes to our system. We would suggest that some of the quick announcements he has made may well come back in time to haunt him.

Both he and I are freshmen to this Legislature. Fortunately I have the relative luxury of some time as an opposition member and a backbencher to get my feet wet on some of these issues. He must learn as he goes. He has been appointed to an important ministry, perhaps the most important ministry in the government, dealing with urgent, pressing social problems.

We in our caucus, as I said, wish him well. I can assure him he can count on our support when his initiatives are progressive, fiscally responsible and responsive to the demands of the people of Ontario. On the other hand, when we see announcements such as the one he made stating that the sale of beer and wine in corner stores would actually reduce the incidence of impaired driving in society because it would encourage people to walk to the corner store, I wonder whether that was a statement that was well thought through.

In situations such as that, I can assure the Attorney General our caucus will carry out its duty as the opposition with vigour and dedication. We are not going to let pass things like that, which we see and analyse as somewhat ill-founded and perhaps not all that well researched.

I have had an opportunity to peruse the summary of the ministry's estimates and would comment that it appears to be a formidable document. Having been through the document as carefully I could at this stage, I would like to comment today on a few general matters as well as on a few of the specific programs.

I can assure the Attorney General that my colleagues and I will have poignant questions and we hope helpful comments with regard to virtually every one of the 35 or 40 programs administered by his ministry and the Attorney General as we progress through our 16 hours of analysis of these estimates.

However, for purposes of my opening statement, I would like to restrict myself to some general comments, not coincidentally perhaps of a nature similar to those commented upon by the Attorney General. I think he has identified correctly some of the major areas of concern to the public in his opening statement.

I am impressed somewhat by the size of the budget, $281,270,000, and would point out that is but a very small percentage of the overall provincial budget of some $27 billion. It is about one per cent of the overall provincial budget. When you consider the size of that budget and consider that the ministry that spends the money is responsible for what is undoubtedly one of the most important functions of government, the administration of justice, I would suggest that is crucial to the functioning of a free and democratic society.

It is the cornerstone of our system, providing the stability necessary within government as well as within society and which allows the other ministries of government–high-spending ministries such as the Ministry of Health, the Ministry of Education and, we hope, the Ministry of the Environment in the future–to deliver the services they provide to the public of Ontario.

It is of particular note that although the budget of the ministry is in excess of $281 million, $163 million of that sum is derived from revenue generated within the ministry–$90 million through fines collected in the court system, plus legal aid fees, registry office and other court fees collected through the ministry–leaving but $118 million of that total to be raised through general taxation or, again applying the percentage, about one half of one per cent of the total provincial budget.

Borrowing from a most successful advertising campaign for Wintario–started by the former government, I would note–I would state there is really no other ministry in government which offers the public more bang for its buck, using that approach to things, when you consider that one half of one per cent of the entire budget is applied towards a ministry providing so essential and so fundamental a service to our society as does this ministry. I think we can argue that we have been well served in the past by the dollars put to that use.

What other ministry employs the quality of professional people to be of service to Ontarians? The ministry employs 194 provincial judges who

presumably have had something of a distinguished legal career to have been asked to take on the role of a judge in our society. It employs just under 300 crown attorneys, and again the requirement must be of a distinguished and experienced lawyer, to present cases of the crown before the courts. It employs 21 senior judges and 84 full-time justices of the peace.

It is most important to our system that the quality of these people not be permitted to be eroded by their being attracted to other endeavours, the private sector and other jobs. As the Attorney General well knows, we are losing some of our best crown attorneys, for instance, to the private sector and we are losing them because they feel and know they can gain considerably increased remuneration by practising law in the private sector over that which they are paid even as senior crown attorneys. We are, therefore, losing our best and some notable cases in the past few years have highlighted that difficulty within the system.

11:10 a.m.

We also employ, to assist the crown attorney system, a functionary known as an assistant part-time crown attorney, more colloquially known in the profession as "rent-a-crowns," as one of which I had the opportunity to serve for 10 or 11 years. I would point out from personal experience that I have declined to continue with that involvement or to take any cases for approximately a year and a half now simply because it has become totally uneconomic to do so. The rent-a-crowns are paid the same fee today as they were paid on an hourly basis 12 years ago. What other segment of society has not received any kind of increase in remuneration in the past 12 years?

While the Attorney General realizes there is a considerable need for an increase in the remuneration of lawyers in the legal aid system–and he dwelled to a considerable extent in his opening statement on the difficulties in that area–he has made no mention, nor do the estimates seem to make mention, of any increase for crown attorneys, in particular for part-time assistant crown attorneys. Although they are not used to any great extent and are not a very large part of the system in the judicial district of York, of which the Attorney General has most experience, they play quite a significant role in the administration of justice, in particular in the smaller counties and smaller towns around the province. In some of the very small counties you will have but one crown attorney administering a staff of perhaps three or four assistant part-time crowns who will do the bulk of the prosecutions in that particular county. They are essential to the system and they should be fairly compensated.

It is similar in the case of provincial court judges. In his statement of last week the Attorney General took a step in the right direction by increasing their pay some four per cent to attempt to satisfy the need to keep them current with a fair and reasonable compensation. However, I would suggest that there is still some inequity in that system; there is still room for improvement in provincial court judges' salary levels.

These judges themselves perceive their salaries to be most unfair, and I am sure the Attorney General has heard from their salary negotiation or arbitration committee, headed by His Honour Judge William Sharpe, a most vociferous advocate of their position, who happens to be a judge in Halton county and who bends my ear more often than I care to admit. They argue that their case loads are significantly greater than those of the district court judges. Every single criminal charge that is laid in this province must first of all appear before a provincial court judge, yet their salaries are some 25 per cent less than those of district court judges.

In the legal aid system, on which the Attorney General has dwelt at some length in his opening statement, there is finally a recognition of some need to improve that situation. A significant offer of an increase has been made to the Law Society of Upper Canada for the improvement of the salaries of lawyers participating in that system over a short period of time.

I might bring the situation down to a more personal level and cite an example of the need, although it has been recognized, for immediate action in that area. In Oakville, which is my constituency, there are approximately 45 to 50 practising lawyers and, interestingly enough, there have been that number for perhaps the last 10 years. There has been a turnover of personnel, obviously, but the numbers have remained relatively consistent.

Eight to 10 years ago, virtually all the lawyers in Oakville were at least registered on the various legal aid panels, and I would suggest that most of them did some legal aid work some of the time. In discussions with our legal aid director in the last couple of weeks, he advised me that there are now only six lawyers in Oakville who will take legal aid cases. That is a considerable drop and it is a considerable problem in the system for people to get adequate and competent representation if the pool they must draw upon is as small as that in a city of some 75,000 to 76,000 people.

Part of the difficulty that the Attorney General may be having in dealing with the Law Society of Upper Canada with regard to his offer, which he acknowledged has not received unanimous favour among all lawyers, is that he is perceived, rightly or wrongly, to have indicated to the law society that his initial offer was non-negotiable. I have been advised by several people who attended the meeting during which that offer was first made–I believe it was in Sarnia, Mr. Chairman, an area with which you will be familiar–that he had used those words, and that it was a take-it-or-leave-it proposition.

He has since indicated that is not so, that he is open to negotiation. I sincerely hope that is the situation; that if he did use those words, they were not meant and have since been withdrawn.

I point out those three areas of concern–the crown attorneys' salaries, the provincial judges' salaries and the legal aid system–because it is fundamental and necessary to the carrying on of our judicial system in Ontario that the highly qualified personnel within the system be adequately compensated, that they not be allowed to slip away to private enterprise.

I would relate back now to my initial comments about the size of the budget we have here and the size of the net budget being but and only–and I hesitate to use such words in relation to millions of dollars, as politicians have got in trouble for that in the past–one half of one per cent of the overall provincial budget. Surely, to maintain an adequate, competent, well-managed and efficient legal system in this province, there is room to manoeuvre. There is room to be fair and just with the highly paid professionals who are in the system and who are necessary to run it.

Over the last 42 years we have built up a legal system which can do us credit in Ontario. We have enjoyed such a system with competent Attorneys General who have seen to the needs of the people. Let us not now, for the sake of a really small amount of dollars in the overall sense, let that system erode.

As I mentioned, the minister oversees some 35 or 40 programs within the Ministry of the Attorney General, all of which will be discussed in the ensuing 15 or 16 hours, and I would advise the Attorney General he will be directed questions, from the members of our caucus at least, on virtually all of those programs.

There will be what we hope will be helpful suggestions concerning amendments, streamlining and improving the situation, notwithstanding the fact that it has been our jurisdiction over the past years to administer that system. There is always room for improvement.

However, at this time I would like to direct my attention to a few of the programs about which we will be speaking, to two of which the Attorney General has already referred in his statement.

First, of course, is the drinking-and-driving situation, upon which he spent considerable time. He referred to the drinking-and-driving countermeasures program, which was instituted three or four years ago by Roy McMurtry, a predecessor in the Attorney General's office. As has been pointed out, drunk driving is one of the most serious social problems in our community today. In excess of 500 people are killed annually on our highways by drunk drivers; that is almost two people per day. A further 81 per day are injured.

Millions of dollars of funds are spent in the rehabilitation of injured persons and families, not to mention the devastation that befalls the family and friends of a person injured or, especially, a person killed in an accident. Whether it involves liquor or not, the devastation is the same; however, where in excess of 500 are killed in accidents involving the use of alcohol, which is a controllable situation, I suggest we have a real problem to which we must direct our full energies. It is reported that at any given time one out of every eight drivers on the roads in Ontario is legally intoxicated.

11:20 a.m.

A number of segments of our society are currently directing their attention towards this problem. There are groups such as those mentioned by the Attorney General–People to Reduce Impaired Driving Everywhere, Mothers Against Drunk Driving, and others–who have directed their energies and attention towards a public education and awareness program.

In addition, hotels, restaurants and taverns recently have become involved with things such as the so-called designated-driver program whereby, when a group of patrons attends their establishments, they encourage the group to pick one of its number to refrain from consuming alcohol during that visit in order that he can drive the others home.

Further, I think taverns, hotels and bars are much more conscious these days of their civil liability in the event of their knowingly allowing someone to become intoxicated on the premises who is subsequently involved in a motor vehicle accident that injures, kills or causes property damage.

The courts, as has been pointed out, are aware of the difficulty and the problem and have become more concerned and more involved with the imposition of higher penalties. That has been seen in the immediate couple of weeks past in the McVeigh case, which I believe was the one the Attorney General was referring to, although he did not mention it.

In that case, which was a criminal negligence case, although it did involve heavy use of alcohol, an accused had appealed to the Court of Appeal his 21-month sentence, hoping and expecting, as of course would be the case, that it would be reduced in the circumstances. However, the Court of Appeal took the initiative actually to increase his sentence to a term of three years.

The Attorney General quoted from the judgement in that case, and I want to quote one other comment from Mr. Justice Bert MacKinnon, who I believe gave the judgement. He said: "Light jail sentences emphasizing rehabilitation have not kept drunk drivers off the road; so it is time to hit all offenders heavily."

Further, the court recommended that harsher sentences can be the spearhead–that is the word that was used–of an attack on all those who drive while intoxicated instead of focusing on those who happen to get into accidents.

The courts are doing their part. That case should be a precedent-setting one for provincial court judges, who I indicated earlier carry the vast bulk of the criminal case load in this province, at least in the first instance, and who I am sure are involved in the actual trial of perhaps in excess of 90 per cent of all impaired driving charges that are laid.

The federal government is doing its part with the passing through Parliament of a package of significantly increased penalties, due to come into effect on December 2, 1985, which will increase the minimum fine for first offenders from $50 to $300. While the average fine in an impaired driving case has traditionally been perhaps $350 or $450, the increasing of the minimum should signal to our judges and courts that they are therefore expected to increase significantly the average fine they hand out for first offences.

What has the Ontario government done with regard to this policy? As I have indicated, other segments of society are moving. The Attorney General dwelt upon his intentions to take significant steps in the near future. He points to the countermeasures program initiated by the previous government as being an area where he will continue to take initiative. However, we have some considerable concern with regard to that statement.

In examining the estimates, it is to be noted that $1,017,000 was expended last year in the countermeasures program. This year, the Attorney General has budgeted for a 40 per cent decrease in that funding, down to $614,000. I hardly think it constitutes a strong initiative in the area of educating the public when a program that is acknowledged by everyone to have worked and to be working has its budget slashed by a magnitude of 40 per cent, or $403,000.

I hope the committee will be able to convince the Attorney General to reinstate those funds, or perhaps it is his intention to redirect them to a new program. We should not be regressing in this area. We should be expanding a program that has done its job and is working.

I can point out, from personal experience, that part of the intention of the program was to encourage municipalities to assist and become involved in workshops, seminars and educative programs within the municipalities. In Oakville, this was taken up by our mayor, Harry Barrett. He ran a highly successful conference on drinking and driving this past spring. There were about 250 participants, and it received significant publicity through our local news media. It was quite the talk of the town for several weeks. I assume that went on in several other municipalities. It is generally known throughout the province that the program was available and it was working.

It is within the power of the provincial Legislature and of the Attorney General to take some significant steps in this area. These would come in addition to a continuation of sufficient funding for the countermeasures program, or other similar programs, that direct our attention to the education side of the problem–which, of course, is necessary. However, on the other side, that is, dealing with drivers who have not seen fit to become educated by whatever programs we might throw at them and therefore have to be dealt with in the courts, as I said, the courts already are increasing the penalties.

What can we do at this level? There are a number of things we can do. The Attorney General can direct his crown attorneys, who prosecute all of these cases, to seek harsher penalties. In the opinion of this party–we have studied this matter, and we have made our views public–several things should happen.

First, we feel the minimum licence suspension, which is now three months, should be

increased significantly for first offenders to at least six months. It should increase to a longer suspension than six months in more severe cases. That is directly within the control of the provincial government, through the Ministry of Transportation and Communications.

With regard to the question of seeking higher penalties, I would point out that although jail terms are imposed in alcohol-related driving offences, in a very few number of cases at present, it is not the practice, and I believe is very rare, that a jail term is called for and imposed in an impaired driving only case. The cases in which jail terms are imposed are at a higher level, such as dangerous driving or criminal negligence in the operation of a motor vehicle. The court will impose a jail term, on occasion, when alcohol is involved. It did in the McVeigh case, which the Attorney General and I have referred to.

What if it became generally known to the public that, in a significantly greater number of cases than at present, the possibility existed that a jail term could be imposed for a first offence, even for straight impaired driving where an accident had not even occurred? Why wait for the accident, as was pointed out by the Court of Appeal? Let us get the message across to those who may have been lucky enough to avoid an accident but have been significantly impaired in the operation of their motor vehicle.

I am not saying that we can set down guidelines. We cannot direct our judges' actions. They must be judicially free to take whatever courses they think are necessary. However, the crown attorney can ask for the imposition of jail terms in cases where blood alcohol readings are quite high or the driving was particularly bad, regardless of whether or not there was an accident.

I can tell you, having dealt with provincial court judges for a considerable time in this province, that they often listen to the representations of the crown attorney much more than those of the defence counsel. Perhaps that is as it should be; perhaps that is a reflection on my skills as a defence counsellor. However, more often than not, the suggestion of the crown attorney regarding the penalty that should be imposed is more closely listened to, and adhered to, by the judge than the suggestion of the defence counsel.

11:30 a.m.

I think we can make progress by instructing crown attorneys to ask for more significant penalties, including jail terms–certainly not in all cases, but in a significant percentage of cases that come before the courts. The message will very quickly get out to the community that if you drink and drive, there is a good possibility you are going to go to jail. We think that will go a long way towards solving the problem.

The second program upon which I would like to touch in my opening statement is one which the Attorney General has referred to as "the victim-witness assistance program," and the whole area of victim justice. This was an area of high priority with our government. In fact, we had made announcements with respect to bringing about a program called the victim-witness assistance program.

The proposal was that it would be financed to the extent of some $5.1 million. I would point out and admit that the financing was never approved. However, I understand it was close to approval by cabinet when we changed government; thus, it never came about. There was some approval for funding an initial trial period of one year, I believe, wherein a co-ordinator was appointed in the ministry–a woman, who was seconded from the federal government–to oversee the setting-up of offices and other facilities in the 52 judicial districts around the province. I further understand her mandate has been renewed for a second year.

The difficulty we have is again in considering the estimates and examining the area where this program was to be funded. There appears to be no new funding whatsoever directed towards a program of this nature. It is mentioned in the estimates, and again in the Attorney General's statement today, that he intends to direct his mind and attention towards that program. However, it is hard to get a program going–one that previously was intended to be financed with $5.1 million–if there is no money to fund it. I would suggest that some direction from this committee may be of assistance in getting it under way.

The program was intended to establish a co-ordinator in each of the 52 judicial districts who would be in charge of overseeing such things as information programs to victims and witnesses of crimes, as well as assisting them in the often complicated and emotionally trying process of going through the court system, bearing in mind that most of the general public has perhaps never been inside a courtroom except with the assistance of television, which often is very misleading.

It would remind people of court dates and assist them with transportation–simple logistical things which are not now provided, and which have created a significant stumbling block to a lot of people who do come before the courts.

Perhaps, for example, they receive a subpoena and arrive for the first time at the courtroom door. There they are met with a harried and rushed crown attorney who says in a few sentences thrown over his shoulder, "You are to attend on the stand and just tell your story." Period.

It is a frightening experience for a lot of people; time has to be taken with them, to assist them in such ways as encouraging them in getting there and then helping them through the system. This can be accomplished by such simple things as travel expenses, arranging for lost pay from work, if that is possible, babysitting and day care. We often take these things for granted, but they are necessary and would be of considerable help. Often in the case of victims, in particular wives who have been victims of assault, there is a significant emotional overlay to their attending court. Perhaps, in severe cases, counselling is necessary. That could be and should be arranged by this program.

Obviously, from the extent of the financing intended by our government, some $5 million, it was to be a significant program and well funded in a number of areas. I encourage the Attorney General, and our party will be encouraging him, to reinstitute and to obtain that funding somehow. I get back to my original remarks about the necessity of adequate funding of what is now a minor expenditure in the overall budget of this government.

Last, and it may seem to some a rather insignificant area, is that of the small claims court system in Ontario. I do that perhaps from a personal point of view. But there is a problem in the small claims court system which perhaps is not fully realized by lawyers from the judicial district of York and by the Attorney General. Within that system the limit of financial jurisdiction, the limit of moneys the courts may deal with, is significantly different within Toronto and outside Toronto.

In Toronto, you may process any debt that you are owed or any claim that you have up to a limit of $3,000 through the simplified small claims court system–which usually does not require the assistance of a lawyer–where clerks of the court will assist you in completing the necessary forms, often in longhand, will take over the responsibility of service of those documents, advise you of your court date, and provide you with assistance–and often it is the judges who provide it–in the presenting of evidence through that system. It is a people's court and a significant service to the small businessman whose debts are inevitably under $3,000, or to anyone in society who is owed a small amount of money.

However, outside of Toronto, the monetary limit for processing of these claims is $1,000. I have long wondered why there is this difference and, as someone who has been practising primarily outside the judicial district of York, I can tell you that is a significant disadvantage or discouragement to small business people and to others who are attempting to process the collection of their small claims. The sum of $1,000 is not very much these days, and many debts of small business people exceed it. They simply do not have the funds to process a claim from $1,500 to $2,000 in the judicial court system.

The judicial court system requires a more elaborate procedure whereby a lawyer is necessary to draft the forms, file them, attend to their service through the sheriff's office perhaps–but often not, because again, the sheriff's office is not always as quick as it should be in most areas. If the case is defended there must be a full-blown trial before a judicial court judge, with the lawyers wearing gowns, and with all the attendant costs, inconvenience and delays that are inherent in a system that is designed to handle more serious situations than a $1,500 claim.

The usual argument for not extending the system to small claims courts outside of Metro is the additional cost of staffing the small claims court offices and the small claims court clerks and judges system. If we are now paying district court judges, all of the clerks and all of the clerks of the court, registrars, the sheriffs' officers and the pensioners who attend district courts to process these smaller claims, surely in the long run there would be a saving in the shifting of some funds from that system to the small claims court system, because there is a streamlined and lesser expensive system at the lower court level.

The change necessary to increase the levels to $3,000 outside Metro does not require an amendment to the legislation; it requires only the passing of an order in council to amend a very simple regulation. I urge the Attorney General to give that consideration. I have written to him in that regard, and he has written me back a conciliatory letter indicating that of course he will look into it and of course he will give it consideration–but of course he has not done so in the three or four months since the date of that letter.

11:40 a.m.

Those are brief remarks by way of my opening submission. I thank the members of the committee for their attention and I thank the Attorney

General for his attention throughout. I noticed him taking notes and nodding in agreement with respect to some of my comments. I hope the same spirit of conviviality exists at the end of the 16 hours as does at present. Thank you very much.

Mr. Chairman: I have one housekeeping item before we proceed. I have the substitute slips that I received from Mr. Lane and also from Mr. Taylor. Mr. Bossy, I do not have yours yet. Could you provide us with one at some point so that we can clear that up? You are replacing Mr. Cooke, I believe?

On another item, I want to remind the committee that the Attorney General will be unavoidably detained on Thursday for one hour due to policies and priorities committee, and with your concurrence, and this I might add is not unusual in past tradition, we would have the deputy minister attend in his absence for that first hour. If there is any disagreement with that, I would like to hear your view on that now. If there is not, we will proceed on that basis, that for the first hour, the Attorney General will not be here.

Ms. Fish: My concern is merely the same concern I raised the other day in the bill. The questions that come forth in estimates are not simply questions of nonpolicy. The estimates in the budget are an instrument of policy establishing policy priorities. Questions therefore will often touch upon policy and exploring the policy with the responsible minister. So my question again today, as it was the other day, is who will speak for the Attorney General in answering those policy questions and who will be able to speak as he would at committee?

As I indicated before, normally in a system where there is a parliamentary assistant, the parliamentary assistant might provide that, or another minister, in cases of the Attorney General being out of the country or being ill for a period of time and so forth. That does cause a bit of concern to me. I would be satisfied if I understood there was someone who was clearly in a position to speak on those matters. I am not aware that this is the case.

Hon. Mr. Scott: The observation is a fair one. The deputy minister is highly knowledgeable and can provide the committee with assistance in an informational way. It would be unfair and improper to take him to the rack on an issue of policy, and he could not be expected to respond. Any policy deficiencies are my responsibility, not his. If you wanted to proceed with the deputy minister, reserving the policy rack for my arrival, I would be delighted to do that. If, on the other hand, you would rather not, I quite understand.

Ms. Fish: I was not suggesting a policy rack.

Hon. Mr. Scott: No, I am being facetious.

Ms. Fish: I was trying to make a serious point about the policy behind decisions on estimates and expenditures and exploring the decisions respecting organization of various offices and their parameters. I am concerned about being able to do that with the Attorney General because surely it was implicit in my opening concern that I agree it is inappropriate to direct such matters to the public service.

I have a little difficulty in finding those things that we would consider to be so routine and mundane and so lacking in a relationship to policy that we might proceed, particularly in the very opening hours of these estimates. Obviously, I would defer to the judgement of my colleagues on committee, but until I hear from some other members, my own informal suggestion at this point is that if the Attorney General is unable to sit, then perhaps the committee should begin its deliberations a little later in the afternoon when the Attorney General is able to come.

Ms. Gigantes: I agree.

Hon. Mr. Scott: I am glad to be here, but I have that one-hour problem tomorrow.

Mr. Chairman: Let us try to accommodate the situation to everyone's satisfaction. If you feel strongly as a committee that we should not proceed in the absence of the Attorney General, is it agreed by the committee that we defer the start of the committee for one hour? Agreed. That meets with your satisfaction, sir? Okay.

Ms. Gigantes, I would ask you now to proceed with your comments, please.

Ms. Gigantes: I should note at the beginning that I have not produced a substitute for the member for Scarborough-Ellesmere (Mr. Warner), who has been called away by other duties relating to these estimates. There is no substitute for the member for Scarborough-Ellesmere anyhow, as all committee members are aware.

It is my pleasure to join in this discussion, particularly at this point when we are at a watershed in government in Ontario. We have a mandate for change, and a large part of that mandate can be reflected in the changes we effect in our system of justice.

Mr. O'Connor: I do not want to interrupt, and I do apologize, but we are having a little trouble hearing you over here. I wonder if the sound could be turned up.

Ms. Gigantes: The microphone is not on. Should I move?

Ms. Fish: Is it on now?

Ms. Gigantes: No—oh, there it is. The light is not on.

Interjection: Do not go by the lights; they get broken sometimes.

Ms. Gigantes: Yes, but it was not on before. You cannot hear the difference, but everybody else can.

As I was saying, we have a mandate for change. It is a split mandate, and it is going to be part of the interest of both the elected members and the public of Ontario to watch how that split mandate works itself out over the next few months and years in this province.

I was honoured and moved by the words the Attorney General spoke in remembrance of my former colleague James Renwick. I join with him in his expression of respect and honour for Chief Justice McRuer.

Having participated more or less as an observer in justice committee discussions in my earlier incarnation as an elected member, I watched James Renwick carry out his duty in speaking on behalf of the New Democratic Party and New Democratic supporters in this province and on behalf of people who look towards progressive change in the law and to the happy combination of a change in law and progressive development in our society generally. To think back to James and his contribution in those years inevitably makes me feel close to tears.

He was, as the Attorney General has said, an extremely dedicated and fine representative, not only of the people of the riding of Riverdale, of which he always spoke with such respect, but also of the best elements of people of this province, their traditions and their hopes for the future.

I think of the changes he saw in the late 1960s, when he was first elected to this Legislature, and the system of justice we now see before us, and I realize the many contributions he made to the changes that we see. How dramatically different our view of the goals of our system of justice in a developing and progressive society is from what it was 20 years ago.

11:50 a.m.

We have always known that the justice system is one that is absolutely basic to government, no matter what kind of government. The better the justice system, the better the quality of government we have. One of the ways populations test the quality of their governments is to look at their justice systems.

As elected representatives, we sense that the way the public views the justice system is something we want to see develop with trust and with a sense of confidence in that system as well as with an acknowledgement that the system is effective for the purposes it serves. However, the purposes it is being called upon to serve have changed. We expect a lot more of our justice system than we did in the days in North America, for example, when people named sheriffs tried to keep down the worst elements of violence, corruption and other social infamies in their communities.

Fortunately, we have a long tradition of British justice, which we have been able to transport and build on in this new society in Canada, and particularly in Ontario, where our British traditions are very strong. It is a time when we should pause and think about what we do in the justice system; how it is that we can best reinforce public trust and confidence and a sense of effectiveness.

We should begin by looking at the many areas that are raised before us in terms of programs. The many items mentioned by the Attorney General in his thoughtful presentation this morning and in many of the comments raised by my Conservative colleague, the areas we are dealing with now, are the ones of most new activity, which a decade or two ago would not have been considered part of the concern of the justice system.

I made a quick count when the Attorney General was speaking. He raised 18 major subjects, by my count. Of those, about seven related strictly to the role of women and our changing needs in terms of the justice system and its administration to reflect the role of women in society.

When we look at such programs as the native justices of the peace program and at concerns about race relations in terms of how they are affected and can be improved by our justice system, we are obviously looking at areas where our sensitivities have changed and the mandate of our justice system has grown.

However, to a large portion of the public, which as my Conservative colleague noted has very little to do with the court system, the justice system is essentially a court system and a correction system. Except in unusual circumstances, that is the view the public has.

Given that, and given that there are certain developments in a social sense, perhaps even in an economic sense, that have changed the public's perception of what happens in the court system, in the criminal justice system and in the

corrections system, I think it is worth while addressing the overall question of what purposes our justice system serves in the light of what we know about public perceptions.

I hope that along the way, during this discussion and in the months and years ahead of us, we will start to ask ourselves questions about the public's perception of the crime rate, for example. What is a crime rate? Is it police reports? Is it victimization studies, where people actually report what crimes they have had committed against themselves? When we have a successful program such as the reduce impaired driving everywhere program, where drunk drivers are stopped and taken off the streets, is it the public's perception that a successful program means the crime rate has gone up?

We have got ourselves into some conundrums of definition and philosophy around these elements of our justice system that we would do well to examine now.

If the public perception of the crime rate is part of our motive for changing laws, as it obviously is in our representative system; if written law has no effect without law enforcement; if law enforcement is selective in certain areas, as we know it has been, and if we know that sentencing can change according to public perceptions and the perceptions of elected representatives of what law enforcement should be or, indeed, what crime is, then we need to be looking at how one system feeds into another.

We also need to be examining the relationship between our correction system, our law enforcement system and our laws. When we look at the Young Offenders Act, for example, we need to ask questions about the changes that should be coming under that act, what new developments such as open-custody centres mean and whether they are the kinds of solutions to the urges that have created the law in the first place.

I hope this Attorney General, who offers us a great deal in terms of our ability to tackle these overall questions because of his well-proved experience and personal interest, will help us to start looking at some of those questions.

In these estimates, one area we could look at most profitably is the treatment of young offenders; there are also the questions of drinking and driving and the whole legal aid system. Many of these areas are simple items which contribute to this system we are called to reflect upon and examine.

The policy judgements we make cannot simply be whether we are putting enough money into our drinking-driving program, but what is our drinking-driving program about; what problem does it attempt to solve; how is it solving that problem, if it is, and where should we be putting our resources? Whom should we be asking for advice on that?

Our discussion in these estimates, if we can relate it to a more reflective examination of our justice system in 1985 and the years to come, can be a very valuable one because we are in a new political situation in Ontario. There is also a current of public interest and concern that can and should be taken into account at this time.

I will not go into specific items in the estimates now; I will be glad to leave that until later. I would suggest, however, that we might think in terms of how we allocate our time through these estimates. The Attorney General has suggested that many of the items he would like to discuss with us are not contained in these estimates, but are, for example, in the women's programs and the native programs and initiatives that come under his responsibility.

12 p.m.

We have 16 hours to go through the Attorney General's estimates and four for the other two. Would the committee consider the allocation of time and perhaps provide a little extra time for the two latter programs? Perhaps we can be as disciplined as possible in how we use the time in these general estimates for the Ministry of the Attorney General, in spite of the fact that I want answers to all the questions in the world during these discussions.

Hon. Mr. Scott: While we have a minute, I would like to take advantage of the time to make some comments, particularly on the latter point the member for Ottawa Centre (Ms. Gigantes) has raised.

First of all, and I hope she will take this remark in the spirit in which it is made, I think the reason justice officials had a great deal of confidence in Mr. Renwick was that he was one of us. He was a lawyer. The priesthood mentality was there. I would like to compliment her. It seemed to me, listening to her, that though perhaps not a lawyer, she raised the very considerations that would have moved Jim Renwick in a setting like this. Frankly, I feel great about that. I think we are going to have a very productive discussion.

It is added to by the member for Oakville (Mr. O'Connor), of course, who has concrete experience. I did not know he was one of our rent-a-crowns, but he has had concrete experience over many years.

I would like to make some brief observations about some of the points that have been made.

The first is the general question of crown attorneys' salaries. We have taken some initiatives in that area which are perhaps unknown to the honourable member and which I will outline when the time comes if he wants to hear it.

We have also taken an initiative he noted with respect to provincial judges' salaries, with the result that the provincial judges of Ontario are the second highest paid provincial judges in the country. Alberta judges are paid higher because their payment is rigged to a percentage of federal judges' payment, which is now going up to $103,000 for district court judges. Leaving that aside, provincial judges in Ontario are now the highest paid except those in Alberta.

The second point I would like to make–because what is said here may be reported–is with reference to the suggestion that I had said to the law society that the legal aid proposal was non-negotiable. That is not correct. The proposal was made by me initially at a public meeting, a legal aid conference in Halifax. In that conference, I discussed the question as a general question and pointed out only that for every $25 contribution the bar might make, a one per cent advance in the tariff was achieved. I mentioned no concrete figures.

When I met with the treasurer, I used that figure again and invited him to make a proposal. He said, "Let us see how it works out." I think it was a practical and sensible thing to say. I said, "On what basis?" and he said, "On the assumption that we can get a reasonable overall increase for the lawyers." We picked on 60 per cent as a reasonable increase and worked back from that. However, it was always open to the law society, and always has been, to make any suggestions. I cannot compel their hand except by legislation.

It was never intended or expected that the proposal would be regarded as non-negotiable. Indeed, I have confirmed that. It may have been perceived as non-negotiable because they have not responded to it, but I have made it perfectly plain that any proposal the law society wants to discuss on the matter of the tariff, I am prepared to discuss at any opportunity.

I should also deal with the countermeasures budget. The member for Oakville has noted the paper decrease. I want to make two points about that. The first is that the 1984-85 estimate for that program was $300,000. In fact, internally, the actual expenditure was in excess of $1 million, which I suppose shows what a creative department can do when given a budget allocation. By effectively marshalling its resources, it can spend three times what has been allocated to the program if the cause is a good and sound one. That is not going to be an attitude that is going to escape me in the future. In addition, the actual estimate this year is $614,500, which is twice the estimate for last year. It is not $400,000 less but, in fact, twice the estimate.

The second point is that last year there were two nonrepeating expenditures. The first item was $155,000 for the making of a film called Make Sure It Isn't You, which is now in the repertoire of the ministry and will be used again this year. We do not have to make another film this year and therefore we need $155,000 less. The second amount was $129,000, which represented the creative work on the Christmas advertising campaign. That is nonrepeating in the sense that we are going to be using the same creative work in the Christmas advertising campaign. So close to $300,000 is money that has been spent from which we will reap the benefit this year without making the expenditure.

I should also tell him that a direction has been given by the director of crown attorneys with respect to the recent Court of Appeal decision to which he referred. I will try to get a copy of it for you. I understand what it says is that crown attorneys should make submissions with respect to the full range of penalties, including the imprisonment penalty, if circumstances warrant it.

I know the honourable member would not want to go any further than that as an experienced rent-a-crown or defence counsel. He is not saying the most trivial case should be visited by a jail sentence. He is simply asking that the crown attorneys should direct their minds and the mind of the court to the possibility of a jail sentence in an appropriate case. I should have told him earlier that has now been done.

I have heard what he says about suspensions with regard to impaired driving offences and we will have occasion to talk about that when we get to the item.

Those were the comments I wanted to make while I had them in mind.

Ms. Fish: Do we now have the opportunity to ask questions on some of the explanations?

Mr. Chairman: Yes. Your comments and then Ms. Gigantes, I believe, had some as well. We will deal with those prior to getting into the actual items. So we can deal with the opening statement and any questions you might have on the responses.

Ms. Fish: I had a question at one point on the explanation the Attorney General had given for the change in allocation of $400,000 you were

just talking about, some nonrecurring expense items. If I heard you correctly, was one of them a promotional or media campaign associated with the holiday season?

Hon. Mr. Scott: No. It was not the media purchase but the creative work for last year's holiday-season campaign; the creative work cost $129,000. I take it that means the layout, the production of film clips and so on. That cost $129,000 and will be used again. We do not have to spend $129,000 this year to use the same material. So that is nonrepeating.

Ms. Fish: Did the cost of the media buy come out of the same budget or would that have come out of another item?

Hon. Mr. Scott: I understand it may not have. There is a possibility of some overlap. We will look into that to make certain the figure I have given you is an accurate one. At the moment, I understand it is dominantly the creative cost of preparing the material. If there is an overlap, we will try to ascertain that for you.

Ms. Fish: I am prepared to put it off for today. We can come back to that tomorrow or the next day. But I would be interested in being able to identify the media-buy area, the budget from which it is drawn and what the impact is, if any, going back to that option.

Hon. Mr. Scott: I just wanted to bring it to the attention of the member for Oakville before his radio broadcast. It is in the can but it is not on the air yet.

12:10 p.m.

Ms. Gigantes: I want to focus for a moment on the question of the legal aid increase. The Attorney General keeps referring to a 111 per cent increase and a 60 per cent increase. Those increases are over what time?

Hon. Mr. Scott: The fact-finder appointed by the former government was asked to translate the 1967 tariff into 1985 dollars. That is all he was asked to do. He did that and said we would need a 111 per cent increase to make that translation. There is some suggestion, which I think is accurate, that he may have technically gone beyond his terms of reference, but he recommended how that should be paid out. He was not asked to do that.

Ms. Gigantes: It was free advice.

Hon. Mr. Scott: It was free advice, and his advice was that it should be done over a three-year period. He set out percentages that should be implemented over the three-year period.

Ms. Gigantes: When Mr. Nixon was talking about 60 per cent, which period was he talking about?

Hon. Mr. Scott: Which Mr. Nixon?

Ms. Gigantes: The Treasurer.

Hon. Mr. Scott: Oh, Mr. Genest. I am sorry.

Ms. Gigantes: I am sorry; I have my treasurers mixed up.

Hon. Mr. Scott: You have your treasurers mixed up. The treasurer of the Law Society of Upper Canada and I, when we met and discussed the problem, agreed we would try to develop a kind of package that could be put to the law society, which controls the matter, as well as to our Treasurer and cabinet colleagues.

After some discussion, we said, "Let us try for a 60 per cent increase in one year," or in the first six months of the period, because part of it was to take place immediately and part of it was to take place on January 1, 1986. The package is quite complicated, but we were aiming at 60 per cent.

To reach the 60 per cent figure, he recognized, bearing in mind what we would do, that the profession would be asked for a contribution that worked out to about $470 per lawyer. We did not insist that it should be a levy. We did not insist that it should be a levy on every lawyer. It was open to the benchers to consider, for example, that it should not be a levy made against those who already do legal aid, that it should not be a levy made against those newcomers in the profession who have certain startup costs, or that it should not be a levy that might be adjusted based on years of service. All those things were for him, not for me.

Ms. Gigantes: But it was 60 per cent in one year.

Hon. Mr. Scott: That is what we hoped, with their co-operation, to produce; it was between 55 and 60 per cent, to be accurate, in that range.

Ms. Gigantes: Thank you.

Mr. Lane: I understand there are two problems with the legal aid payments; one is that they are not sufficient, and the other is that they are too damned long in coming. Lawyers tell me they have to wait for a long time to get reimbursed for their efforts. In many cases, the people taking legal aid cases are young lawyers just getting started up and this is a hardship to them. I wonder if the minister has any comment on that problem.

Hon. Mr. Scott: There are two observations to be made about Mr. Lane's point that there is a long gap in payment, as I understand the matter.

First, after the lawyer submits his account, it is taxed, reviewed and assessed before the amount is fixed. That process is conducted entirely by the Law Society of Upper Canada, and not by the Attorney General's ministry. If there are delays in that process, as I have heard, it is a matter of the law society, which runs the plan, improving its system. That would be one area of delay, and while I would hope to have persuasive influence in that area, it is really a matter for the law society. They want to run the plan according to their systems, and if there is delay in fixing the account, we are going to have to ask them to get on about the job.

If there is a delay in Treasury money being forwarded to the law society, that would be a problem for which we would have responsibility. I can tell you that for a period of time, I think about year and a half ago, for Treasury reasons that I do not understand at the moment, there was a significant delay in the sense that the law society would tell the government it needed $6 million and there would be a substantial delay before it got the $6 million, which meant the lawyers were paid very slowly.

That problem has been solved. What happens now is that a certificate is sent over from the law society, "We need $6 million; we need $8 million; we need $4 million." I think it is paid very promptly. It would be paid within weeks.

Mr. Lane: Thank you for that information. I am sure you could be very persuasive with the law society if it is delinquent in the time it is taking to do its work.

Hon. Mr. Scott: I am going to do my best. We have two members on the legal committee. One of our concerns is always to see that the system the law society sets up is one which is in the public interest. There are many paperwork difficulties. I get that from the young lawyers in my constituency, too. We will continue to keep our eye on it and do what we can to persuade the law society to get systems which move quickly.

Mr. Chairman: If I could just supplement what Mr. Lane has said, I have also noted in conversation with many lawyers that there appears to be rigidity with respect to the capping of bills in cases where the amount of work that has gone into the case far exceeds that which is now allowable.

There are lawyers who, I think with some justification, have argued that the amount of work that may have gone into preparation and a trial in a specific case cannot be established at some distant location. I wonder if that might be discussed. I realize that is a difficult problem to come to grips with, but I am arguing for a degree of flexibility to allow for some judgement calls in cases where the capping is inappropriate in a given circumstance.

Hon. Mr. Scott: There is a note under the tariff which allows the taxing officer to make a discretionary decision and it will be used by the taxing officer in the cases where he regards it as appropriate. The point to be made, however, is that the law society runs the plan under the current system.

While we, as a government, decide how much money will be available for the running of the plan, they make a recommendation as to how they want it applied. They will say, "We think lawyers should be paid X dollars an hour. We think there should be maximum fees for impaired driving cases," and so on. They provide what is called the tariff and we incorporate that tariff into regulations.

It has always been the position of the government that this is a matter in which the law society has special knowledge in the interests of its members and that its recommendation should be acceded to in almost every case. They fix the tariff in the sense they recommend it to us and we incorporate it in the regulations.

The law society and the lawyers in the province would be very concerned if government began to set the tariff, although we have the obligation of setting the global budget. The tariff, of course, leads to the taxing of the bills.

I get some complaints from my lawyer constituents that the tariff is too complicated or that the bill form is too difficult. That is a problem for the Law Society of Upper Canada. Our representatives on the legal aid committee will continue to watch it and make suggestions.

If the matter ever gets out of hand, I am certain to hear from this committee, but the scheme in place allows the law society a very large measure of control in those matters. That is fine, but they are the ones we speak to when those controls lead to delay.

That is a long answer for a short point.

Mr. Chairman: I respect the response you have given, except that I would again reiterate that there are circumstances where it appears there is an unfair application of judgement relative to a specific account. I do not know that there is a flexibility built into the system that allows for unusual circumstances.

Particularly in law, it is very difficult to ascertain in advance that a case is going to last a given number of hours and that the application may be fair and equitable in all circumstances.

The method of appeal or the method of raising an argument relative to that situation is not very open and accessible.

12:20 p.m.

Hon. Mr. Scott: The young lawyers who find themselves in that situation should complain to the law society. I will complain to the law society if I find out those complaints are justified, but it is the law society's recommendation in the end which is going to govern under the present system, as long as we carry forward the present system.

Mr. O'Connor: I am not quite sure of the procedure. I assume we are commenting and asking questions on the opening statements of the minister and the critics.

Mr. Chairman: Yes.

Mr. O'Connor: In that regard, I want to make one point. I may come back to it when we are dealing with the individual estimates. When speaking of the victim-justice situation on page 27 of his printed statement, he notes that the ministry has identified and trained a crown attorney or assistant crown attorney in each office.

I had occasion to discuss that situation with the crown attorneys in my area. I am advised that all they received was a memo from the ministry indicating that they should appoint one of their number to develop a program to deal with domestic assault charges.

One young fellow who had an interest in this area took it on his own initiative and now sees victims and witnesses involved in those types of cases, but he received no direction and no training other than the one memo. Is there a training program set up that he is not aware of, and perhaps the Attorney General is not aware of, which you might make available to us the next time we come here–a copy of whatever kit or training manual may have been produced in that area?

Hon. Mr. Scott: I take it you are not complaining about the excellent service this crown attorney is providing.

Mr. O'Connor: I am asking if there has been a training program set up that we be made aware of it, because this young crown attorney was not aware of it and took it on his own initiative to develop a system in our area.

Hon. Mr. Scott: We will have to look into that. There certainly is a program and one that has been applied. What you are telling me is that it did not come to the attention of the crown attorney in Oakville. I will inquire into that and find out what the circumstances are for you.

Mr. O'Connor: I have raised it now so perhaps you can bring it the next time or at a subsequent time.

Mr. Chairman: I do not know where it is in the budget, but I would like to thank the Attorney General for arranging the musical interlude in the background. It is certainly adding a rather festive flavour to this discussion.

Hon. Mr. Scott: Sure. I think it is the right spirit.

Mr. Chairman: It is a unique change of pace from the former government. These meetings were always very quiet, sedate and straightforward, but the music is appreciated and I did not want that to go missing in the attention we might give to this subject. We have about nine minutes, so let us continue.

Ms. Fish: I want to put in a couple of requests for information arising from the statement. I am looking at page 20, which deals with legal aid clinics. I share your strong support of the clinics and the importance of their role.

I was troubled by what I inferred from the opening paragraph of that page, which suggested there was a major assault on the clinics. Perhaps my inference was that there were proposals in front of you or the government for a tax on the legal aid clinic system that would have to be dealt with. I consider such a tax to be of a most serious nature.

I wonder if you would table with us the specific problems you seem to be dealing with by way of a tax on legal aid clinics. Your language, on the bottom of page 19 and the top of page 20, was unusually strong for the tenor of the statement. It is for that reason that I infer that there is something more there in the way of specific call, claim, recommendation or proposal you are being asked to deal with.

Hon. Mr. Scott: I can respond to that in a general way and see if we can provide you with some detail, although it will be difficult. The program, as you have seen, has moved from the establishment of a very few clinics in Ontario to a great many all across the province. They perform a wide variety of specialized subjects. Some are clinics for the handicapped, the disabled. Some are clinics for landlord and tenant matters. Some are clinics for Workers' Compensation Board matters.

There have been from time to time, as you consider opening a clinic in a new community, serious sources of resistance. The first source of

resistance to the arrival of a clinic is, I regret to say, the local bar, which is often unaware of what the clinic is going to do in its community and perceives the arrival of a clinic as an encroachment on the profession's right to monopolize under the statute legal services in the community. The first difficulty you have in establishing a clinic in a new community is that the local bar may perceive it as a threatening gesture which will have the effect of reducing its capacity to do business.

The second source of difficulty is sometimes not the profession but other interest groups. It might not surprise you to know that the establishment of a legal aid clinic to deal with landlord and tenant matters may be perceived from time to time by landlords as a threatening matter in the sense that some landlords—not the ones who know of the thing perhaps—will think, "A clinic to deal with landlord and tenant matters is being set down in our community, and they are going to make life tough for us."

We have these two sources of resistance. On the whole, the law society and the Attorney General's ministry have been very successful at allaying suspicion in the profession and among special interest group which perceive the clinic as attacking their own interests.

We opened two clinics just the other day, in Cornwall and Thunder Bay. A considerable amount of groundwork had to be done to persuade the profession that these clinics were going to provide a useful resource for the community and would not be a threat to the existence of the profession. Why do we go to all that trouble? We go to all that trouble not just to be nice, although we want to be nice, but to ensure a high level of co-operation between the clinic, which will do part of the legal work in the community, and the professional bar, which has to continue to do the rest under certificates.

We have been very fortunate, and it is a tribute to the staff and to the law society, that over a period of time we have been able to establish clinics in places where they were initially resisted vigorously and now are quite comfortably at home performing a useful role.

Ms. Fish: Part of my difficulty is that your remarks as printed and delivered did not distinguish the potential for resistance you have described in your explanation now, being confined or targeted to areas where clinics had not been in existence.

As I read through this and listened to your remarks carefully, I drew the inference that the problem was, even dealing with those clinics that are very well established and doing a first-rate job for those very clients that we want them to do the job for, that we have taken a variety of steps over the years to ensure they can do the job.

I concluded from your remarks that certain pressure groups had come forward with specific proposals to shut down or curtail specific clinics and that there was a problem you felt you were dealing with in terms of affording defence.

My question may have arisen through some inadvertent misunderstanding of your remarks, but I wonder if you could speak to that point.

12:30 p.m.

Hon. Mr. Scott: No, it has not. I tried to respond to your concern, and I perhaps overemphasized the fact that the resistance to clinics arises upon their initiation. That is a primary cause of resistance in some communities. However, there is resistance to the work that established clinics do.

For example, Parkdale Community Legal Services, which is run in conjunction with Osgoode Hall, has done very significant work in the landlord and tenant field, rolling back rents for building after building. That has provoked very serious resistance among landlords. Let us be frank. Those landlords are electors in the community, and they bring pressure on elected members and on the caucuses of all our parties.

There is that kind of ongoing resistance on the basis that this kind of exercise in the community is divisive. In my opinion, it is not divisive; it assures our ability to carry the justice system to the poor. However, it stops a lot of people in their tracks. They do not like that sometimes, and they bring pressure to bear on elected officials and on other people to curtail these efforts, to cut back the budget for legal aid clinics.

We have to be conscious of that all the time, because if we accept the proposition that these clinics are necessary in the interests of justice, we have to ensure that inappropriate influences are stopped.

Ms. Fish: That is exactly the reason I am asking for a specific, very detailed illustration. You use the example of Parkdale. It is a model that I for one would welcome seeing repeated right across this province. It is one of the most superb legal clinics available. It is one I have had a great deal to do with over the years. There are a number of others, but my particular and regular experience with many of them is in Toronto, since that is where my riding is located and where the constituents I work for live and have their concerns.

I think the clinics are first-rate. They attract first-rate people to them. They do an excellent job, and for my money, we cannot expand them fast enough within the metropolitan area and elsewhere. They are just great.

I really do want to know whether what you are confronting are current specific proposals to close down clinics or assaults on them. I am asking it genuinely, because I would be most concerned about that. I am looking for specific, current illustrations.

Ms. Gigantes: Perhaps I can help. I know not only of community objections in Ottawa but also of statements by judges in hearings undertaken, for example, by the West-End Legal Services clinic on a matter of rent control that in my view questioned the whole role of the clinics and of workers involved in the clinics.

I refer the member for St. George (Ms. Fish) to a detailed account of a relatively recent case reported in News Update from the information department of the Law Society of Upper Canada. It discusses a case taken on by the Advocacy Resource Centre for the Handicapped, or ARCH, on behalf of the patients at a treatment centre for the mentally retarded who were given rectal examinations by a doctor.

The defence lawyer in that case, before judgement, wrote in May 1984 to the legal aid committee of the Law Society of Upper Canada urging it to "take whatever steps are necessary to terminate the services of such organizations"–he is referring to ARCH–"in so far as they go outside the appropriate boundaries of proper legal aid."

That is a pretty direct piece of evidence of the kind of resistance and, I would say, reaction that the Attorney General is speaking to. He is not just talking about setting up new clinics; he is talking about well-established clinics that have performed, as you point out, a very important role.

We would be silly not to recognize that there is that reaction and that when we are dealing with legal aid clinics and our view as elected representatives of how they should be funded and administered, that is part of what we are dealing with.

Mr. Chairman: Members of the committee, I draw your attention to the time.

Ms. Fish: We are out of time, but perhaps I could pursue this with the Attorney General on a subsequent day.

Mr. Chairman: Yes, certainly. The hour for which this committee is to adjourn has expired. I allowed a bit of licence so we could complete this item. Since it has not been completely dealt with, we can pick up from there when we resume the estimates.

I thank the committee and the Attorney General for his assistance.

The committee adjourned at 12:35 p.m.

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Ontario

No. J-2

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Official Report of Debates
Legislative Assembly of Ontario

Standing Committee on Administration of Justice
Estimates, Ministry of the Attorney General

First Session, 33rd Parliament
Thursday, November 7, 1985

Speaker: Honourable H. A. Edighoffer
Clerk: R. G. Lewis, QC

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday, November 7, 1985

The committee met at 4:47 p.m. in room 151.

ESTIMATES, MINISTRY OF THE ATTORNEY GENERAL
(continued)

Mr. Chairman: Members of the committee, I recognize representation here from all three parties; I believe we have a quorum. We have a relatively short period of time this afternoon, as you know, to proceed with the estimates of the Ministry of the Attorney General, so I would like to get our meeting under way.

We have allowed, as you will recall, a certain amount of flexibility in the earlier discussion that allowed for the response to the statements made in his opening address by the Attorney General (Mr. Scott). I would now like to move to vote 1601 and under that vote we can discuss some of the specifics of the Attorney General's activities in his ministry.

Hon. Mr. Scott: I undertook at the end of the last meeting to give the member for Oakville (Mr. O'Connor) some information on advertising about the drinking-and-driving campaign. That is a separate item, I take it, and I can deal with that when we come to it. I just heard his radio broadcast.

Mr. Chairman: Was it accurate?

Hon. Mr. Scott: I do not want it repeated.

Mr. O'Connor: I can understand why you would not want to repeat it.

Mr. Chairman: Let us not get into that at the moment. We will have all kinds of time, I am sure, to cover those areas of concern very shortly. Shall we proceed to vote 1601 and any comments you might have?

On vote 1601, law officer of the crown program:

Mr. O'Connor: Just by way of clarification, if I may, before my friend starts: are we to discuss each of these items separately or as a whole?

Mr. Chairman: We are to discuss them separately if you have a question or if you have a comment to make on any of the individual lines within that heading, but I do not necessarily need a discussion on items 1 through 8 or 9, going to the bottom of the page. If you want to pass 1601 in total when you get it finished, that is entirely up to the members of the committee.

Ms. Fish: I do not know. Should we let him off on his first estimates?

Mr. Chairman: I doubt that we will do that.

Ms. Fish: Do you think we ought to let him slide past the minister's office?

Mr. Chairman: Ms. Gigantes has raised her hand. Is that clear enough, Mr. O'Connor, with respect to procedure?

Mr. O'Connor: Thank you.

Mr. Chairman: We will pass 1601 in total when we have finished the individual lines if there are questions.

Ms. Gigantes: I am curious about item 3, the first one I have questions about; that is policy development activity. First of all, I do not understand how this activity relates to vote 1604, item 1.2, which is also a policy development activity under the crown law office, criminal.

Hon. Mr. Scott: I am sorry; I am not with you. Vote 1604?

Ms. Gigantes: I am looking at 1601, item 3; and then I am looking at 1604, item 1.2, page 55. I am comparing pages 18 and 55.

Hon. Mr. Scott: The way to describe what happens is that in the criminal area there are policy issues of the type described under item 4 that are restricted to criminal law matters. They are dealt with separately and by the criminal section, not by the general policy section of the ministry, which tends to deal with matters of general civil litigation or legislative reform; for example, police complaints, programs of that type.

Ms. Gigantes: As an example: under 1601, item 3, in the opening paragraph it describes the responsibility "for a number of ministry activities in relation to human rights, race relations..."; and I see over on page 55, point 4 of that item talks about racial violence. I am just wondering how you break those down.

Hon. Mr. Scott: It is difficult to create discrete compartments. However, on the civil side, in response to its general obligation to develop policy responses for civilian problems, racial problems in housing, for example, or racial issues under the Charter of Rights, that division is developing programs and responses of a general legislative or administrative character.

When you come to the criminal law section, there may be specific problems you have to deal with that are generic to criminal law and its enforcement.

Ms. Gigantes: I am wondering whether we might ask the ministry, on vote 1601, item 3, to provide us with a kind of checklist of where these policy development areas are at. There is quite a large listing of specific policy area items.

Hon. Mr. Scott: Mr. Ewart, head of the policy division, is here and perhaps he could come up so we could get ahead with it and describe to you the kinds of projects that are under way.

Ms. Gigantes: I would prefer not to take the committee's time now but as a member of the Legislature I would very much appreciate having a page or two that would provide an update on the situation with respect to these specific subjects.

Second, again in relation to the first paragraph under 1601, item 3, there is reference to ministry activities in relation to human rights. I am wondering if the minister could provide us with some understanding of why in Ontario the Human Rights Code is not administered by the Ministry of the Attorney General, why it is in the Ministry of Labour; whether there have been discussions about changing that and how we should be looking on that question.

Hon. Mr. Scott: The Human Rights Code is a piece of legislation that traditionally has been regarded as within the purview of the Minister of Labour.

Ms. Gigantes: In Ontario.

Hon. Mr. Scott: Yes. The Ontario Human Rights Commission, the offshoot or tribunal for the code, is administered as part of the Ministry of Labour. That has been so either from the beginning or certainly for some time. That is not the case in every jurisdiction, as you probably know. You may say, "Why is the Ministry of the Attorney General in those circumstances presenting an item that deals with human rights?"

Ms. Gigantes: No, I was not asking that.

Hon. Mr. Scott: Let me answer the question I know you were going to ask if I would only let you be.

Ms. Gigantes: I would like you to answer the question I asked.

Hon. Mr. Scott: We have an obligation to deal with human rights issues because the Charter of Rights and Freedoms is one of the central documents that involves the Ministry of the Attorney General. Charter issues cross-cut every civil litigation and almost every criminal litigation issue.

Therefore, the Ministry of the Attorney General has to be not only up to date in respect to charter matters which arise in those cases, but also has to begin to develop charter responses to the challenges increasingly being brought in the courts by a wide range of citizens and organizations. Human rights issues are at the forefront of that kind of challenge.

Human rights is a rather amorphous description but, for example, when groups of the disabled want to attack section 72 of the Education Act, as they recently did, the Attorney General, as counsel to the Ministry of Education, defends that attack and is in the middle of a major human rights question. That is only a sample of literally dozens of such instances.

The crown was not actually served so I do not think it arose but, for example, if Justine Blainey had proceeded a little differently so that she listed the Ontario government as a respondent, the Ministry of the Attorney General would have mounted the defence or presented the government's position with respect to that case under the Human Rights Code.

We have to be at the forefront of that kind of issue, even though the Ministry of Labour has responsibility for the Human Rights Code and the administration of the Ontario Human Rights Commission.

Ms. Gigantes: We are talking about law in the terms in which we talk about law in 1985 and will talk about it for many years to come; perhaps forever. It is a very new kind of way, as I alluded in my opening remarks. Why should a very important part of the new framework of law that we deal with in Ontario not come within a ministry of the crown which deals with law?

Hon. Mr. Scott: I know of no answer to your question. I assume there are probably historic origins that dictate the alignment of the ministry as it now is.

The case has traditionally been made, as the chairman sotto voce suggests, that labour unions played a significant role in the early stage in working towards a code.

Ms. Gigantes: I can understand that in the early focus on employment issues. However, our concerns now with regard to human rights cover a great many areas of legal interest. Increasingly, we ought to be taking a look at a comprehensive administration of this area of the law along with other areas, because they overlap. The import of what happens in human rights legislation and

administration bears directly on the development of our whole justice system.

Hon. Mr. Scott: It is a very thoughtful point which I would like to consider. I note also that when the human rights commission is attacked in a court, as it not infrequently is, it is the responsibility of the Ministry of the Attorney General to represent it, just as it would be our responsibility to represent the police complaints board or some other justice oriented tribunal if it were attacked in a court.

Mr. Polsinelli: I want to make a statement for the committee. As the parliamentary assistant to the Minister of Labour, I am sensitive to the provisions of the Human Rights Code.

My understanding is that the greatest percentage of complaints that originate under that code–in the neighbourhood of 90 per cent–are labour related. The Ministry of Labour is sensitive to promoting harmony in the work place under the Human Rights Code. Since in the neighbourhood of 90 per cent of the complaints are work-place oriented at this point, the Ministry of Labour has the responsibility, and perhaps historically has had the responsibility, of advancing the cause of the code.

Ms. Gigantes: I understand that and I can understand that background, but the nature of the integration of human rights legislation with the rest of our legislation, particularly in the light of the developments that will be coming out at the trial, is such that this will be changing. I think we had better look forward to that.

5 p.m.

Mr. Warner: I was not able to stay for the entire meeting yesterday to deal with the estimates. I have, however, had the opportunity to read the Hansard account of the balance of the sitting. There are a couple of things I appreciated about your opening remarks.

You, in an offhand way, mentioned that perhaps the staff wrote a portion of the tribute to the staff that is in here.

Hon. Mr. Scott: I hasten to say I shared it.

Mr. Warner: Yes. I hasten to add that I would have been privileged to have written that. I think the staff in the Ministry of the Attorney General has earned a reputation over the years as being very objective in its approach to its duties and I, as an opposition member, have always felt very much welcome when I have had inquiries of the ministry. I think I got good attention to my concerns and I am pleased with that. You have inherited an excellent, highly professional staff to assist you.

I also very much appreciate your tribute to Justice McRuer and to my former colleague and very dear friend Jim Renwick. Ms. Gigantes in her opportunity said many of the things I would have said and I do not need to repeat them now. It suffices to say that I think I learned a great deal from Jim when he was here. I tried to listen to him very carefully every time he debated a bill or his philosophy of justice and handled the issue. I think I have learned from him; I hope I have.

He was known not only for an incisive mind on matters but he maintained a relentless pursuit of justice. If there is anything I want to see in an Attorney General of Ontario it is a relentless pursuit of justice. I do not want to see an individual who will be swayed by the emotional winds of the time or be swayed by political concerns, but someone who will steadfastly pursue our justice system, of which we can all be proud. That is what I want of an Attorney General.

I tell you that I will watch carefully and closely. Everyone knows that you come into this assembly with quite a background. You have earned the respect of your colleagues in your profession and I dare say you have already earned the respect of many, if not all, of the members of the assembly because of your ability and because of what is perceived to be your view of the world.

However, I will be watching.

Hon. Mr. Scott: Is that a promise or a threat?

Mr. Warner: It is just a friendly promise.

Hon. Mr. Scott: I am grateful for that and I look forward to your watching relentlessly. Would you like to move your desk beside the Attorney General?

Mr. Warner: Of the things I observed, there were two main items I wish to deal with, one which is said and one which is not said. There is a little surprise in the statement, something which I anticipated would be there and it is not. I will leave that for the moment.

I want to deal with the comments that are contained on pages 20 and 21 regarding the community legal clinics. I hope the Attorney General, with his zeal and zest to obtain all of the knowledge about the Ministry of the Attorney General and all of its programs, has not been misinformed in any way.

The statement is made, in the second paragraph on page 21, that none of the above undermines the autonomy of the clinics. In the first paragraph there are no directives dealing with case selection or local priorities.

What I am about to tell you is that, unfortunately, that is not entirely accurate. There are

problems and I have serious concerns about the development of the clinics.

By way of background, I had the privilege to be among a founding group to start the Scarborough Community Legal Services clinic and was the chairman there for three years. You could not find a more professional group of people to run a clinic. I was absolutely delighted. We had two staff lawyers, five community legal workers and a secretary; and they did a great job.

The community board had its mandate very clearly defined and stuck to it. It did the four things which are in the certificate: public education, case work, organizing and law reform work. In its monthly review, the board was absolutely meticulous about making sure the staff attended to each of those items.

We expended considerable effort on domestic violence. We devoted a lot of our energies to the development of the Emily Stowe shelter, which is a shelter for battered women in Scarborough. It was the first one opened, and at that stage the only one. We spent a great deal of time trying to organize single moms so they would have a more effective voice. We spent a lot of time in law reform around the area of support payments, and the list goes on.

I found, much to my chagrin, what I cannot describe in any other way but bureaucratic interference from the good people downtown, not your ministry, that may eventually be a frustration for you; at this stage it is very much a frustration for me and the people trying to run the clinic.

In instance after instance in the policy directives there was pressure applied by means of the boards which establish certain priorities. If you take the stand that the board should be autonomous–and that has been a stated objective of the previous and this government–and determine it is a community board and will apply the direction from a community base, then surely you set out the priorities which are appropriate to your community.

That was not entirely agreeable to the folks downtown. They wanted a change. We held our own. We went through a really interesting kind of exercise around an assets policy. Suddenly, from somewhere out of the blue, someone decided there should be an assets policy and a scrutinizing of all the individuals coming in. There was some kind of strange assumption there were people out there who would try to rip off the system, a lot of wealthy individuals who were going to meander into the clinic and make use of our wonderful service.

My first response was: "Prove to me you need this. On what basis do you think it is necessary to have an assets policy?" They did not really have any basis. They had no statistics. We kind of held them off for a while the way you hold the wolf away from the door. While we did that, unbeknownst to them, we did our own surveying for the six-month period. We collected data and, lo and behold, at the end of six months we had some very interesting statistics.

5:10 p.m.

We found that of literally hundreds of cases there was a grand sum total of two people who, on the basis of assets, would not have qualified for a service. Both were only slightly above your target figure. One was, quite frankly, a case we would have taken anyway, regardless of income or assets, because of its law reform value. That very clearly is in the mandate of clinics. If it is a particular case, if it warrants law reform, then you do the case. So there was one person.

I sat back. I had all this information and I wondered who in his right mind would devote hundreds of hours of staff time to a scrutiny which is not necessary. Secondly, we discovered that 90 per cent of our cases were people who had already gone through some kind of financial scrutiny because they were welfare recipients or had been through family benefits. They had obviously been scrutinized through the government sources with staff available, which I submit clinics do not have. So it was very clear that an assets policy was totally unnecessary and would be a waste of staff time. Flowing out of it, though, was that a group of people downtown were determining what the priorities should be and how to run the show at our clinic in Scarborough.

Ms. Gigantes: Name them.

Mr. Warner: Name names? If you want names, I will give you names.

It has perhaps reached the time where the Attorney General could very seriously consider an alteration in the system, in the reporting and responsibility. In particular, I refer to that committee with which he is most familiar, the Task Force on Legal Aid, which was chaired by Justice Osler and of which he was a member.

In particular, chapter 3, pages 27 and 28, set out what I think is really the essence of what we should be. "We have recommended that the legal aid plan should be administered, not as at present by a committee of the law society, but rather by a statutory entity made up of both the members of the public, who have an obvious interest in the successful operation of the plan, and the mem-

bers of the law society, who have demonstrated a commitment to its efficiency and have played a controlling role." This would be a committee which is responsible not to the law society but perhaps to us, as it mentions later on.

"It will be the obligation of the board of directors to report annually on the operation of the plan to the Ministry of Justice and to the Attorney General of Ontario. In our view, it should be an obligation of the statute that the Ministry of Justice and the Attorney General report to the board of directors and the Legislature within 30 days of receipt, or, if the Legislature is not then sitting, within five days of commencement of the next session."

In other words, what we have now is in grave danger of stifling the autonomous nature of the clinic. What would be more advisable is to follow the route which was set out in that task force report and to have it report to an independent body which in turn can report to the Legislature. If the Attorney General or anybody else wishes, perhaps it could be sent at some stage to this committee, to the justice committee. I think this reporting mechanism will help to solve the problem which is now before the clinics.

I cannot stress enough the value of the clinics in a community. In Scarborough, we really are underserviced. Despite the good work the clinic is doing, there is a population of 440,000 and we have one clinic. I know there are literally hundreds of Scarborough residents who will not be served, who cannot afford the private bar and for whom justice is not equally available. There really is not much point in having a good justice system if it is not available to all the people. That is what clinics are about, law for the people.

I urge the Attorney General to consider a redirection. I urge him also to look at an expansion of the clinic system in a very systematic and aggressive way. I understand the cost. I want to put the cost into a little perspective. A couple of years ago I was summoned to a cost meeting downtown with the powers that be, and properly so. Every year you justify your budget, what you spent, what you want and why; that is the way it should be.

In the course of the conversation, I said I felt the whole system was underfunded. The answer I got was really curious. "Do you know, Mr. Warner, how much money is spent throughout the entire province for all the clinics we have?" I said, "No, tell me." "Ten million dollars." I said: "That is a very large sum of money. Is that about the same cost as a private jet for a Premier?" "It is." "Where are your priorities? Do you mean that a jet for the Premier so he can get to his condo in Florida is more important than the clinics?" "By no means."

So while the amount has gone up a bit, and I appreciate that, it misses the mark. More money needs to be spent and it is money that is essential. If you have a desire to deliver a justice system to all the people in Ontario, we need more clinics. That costs money. If you allocate money to it, I will support you. I will applaud you. I will not go so far as to put your picture in my literature but I will applaud your reference.

There is a second matter I wish to raise. I mentioned there is something missing in the document. I would appreciate it if the Attorney General could give us his considered views on the public defender system. I understand that notion is still alive and kicking somewhere in the government. I would appreciate knowing his personal views on whether Ontario should have a public defender system.

Ms. Gigantes: It is under study.

Hon. Mr. Scott: With your permission, Mr. Chairman, may I respond by saying that I am grateful to the member. He perhaps missed it but the other day the member for Oakville vigorously asserted, as you each have, that our budget should be increased. I take that as sound recognition of the importance of what the ministry does in the spectrum of the government's activities. The reality is, especially in 1985 as a result of events, we are coming out of a phase in which a lot of the social infrastructure of the province has been chronically underfunded; and there are limited resources.

The Treasurer's budget taxed $700 million. Some of you asked, "What are the new, glitzy programs we are getting for that?" We are not getting any glitzy programs. We are trying to put that money back into increasing the level of funding in a number of areas: education, health services and so on. You can be sure I will do what I can to increase this ministry's budget for the kinds of things you have talked about and I am grateful for your support. I have colleagues in Health, Education and Community and Social Services who do not think I should get more than my share. I will tell them what you said and see if that works.

On the subject of the clinics, you give an example from your own experience of what you call "bureaucratic interference" from downtown. I take it that refers to someone either in the clinic funding office or in the legal aid committee–

Mr. Warner: Right.

Hon. Mr. Scott: –who tried to impose a decision or directive upon you in two cases. I take it in both cases you fought them off successfully but that someone without your steel will might have succumbed in a bad case.

I will deal with that problem but I am not sure the solution you present for the problem is a solution at all. There are a lot of reasons Mr. Justice Osler's model for administering the plan might be considered. We can deal with them later. However, if Legal Aid Ontario was created as he envisaged it, it would have its own bureaucracy just as the legal aid clinic has its own bureaucracy. You would find someone downtown at Legal Aid Ontario trying to give you a directive, just as you do now. So the solution that he proposes, while appropriate for other reasons, is not going to respond to the problem you bring to our attention.

5:20 p.m.

The problem is an inevitable tension that will exist between a community board that is entitled to select its professional or quasi-professional priorities on its own and without interference, and the obligation on that board, subject to the direction of the plan, to be accountable for the tax dollars it spends. Whether a directive lies on the policy side of the line or on the administrative accountability side is always going to be a difficult question.

For example, off the top of my head and without looking up the file, I would have thought the assets requirement might well be the kind of thing where careful taxpayers would want to be assured their tax funds were being expended on the clientele that the clinics were designed to serve. That would not be interference with policy. That would be interference–and a proper interference in my judgement–with the spending of tax dollars.

The other example you gave is much less clear. Indeed, it is so unclear I have forgotten exactly what it was. Inevitably there are going to be these tensions. It is important to watch them, but some mechanism is required to assure that tax dollars are spent on the purpose for which they were assigned and that the administration of the clinic meets certain standards. It would not be the first time that one man's bureaucratic interference is regarded as another man's accountability. That is not to say that we should not watch it.

Mr. Warner: There is a difference. Under the present system, the line of accountability goes through the clinic staff, the clinic funding committee, to the Law Society of Upper Canada, which is a self-regulating body. If you change the direction, the line of accountability ends up here, and I think that is a distinct difference. Part of the accountability rests with the community board. That is why, in your wisdom, you decided there would be a board of individuals from the community.

Hon. Mr. Scott: No, I do not think it makes any difference which of those models you select. The essence of both of them, and you will see that Mr. Justice Osler is very careful to emphasize it, is that either method has to be independent of government. There has to be a measure of independence, and when you set up a mechanism that is independent it is obliged to develop, in the best sense, its bureaucracy.

That bureaucracy, operating a clinic system which has moved from one–when he was writing there was only one in Ontario which was run by Osgoode Hall–to 51 now, is inevitably going to set a series of rules and standards about the expenditure of public money. If it did not do so I would have a serious complaint about it.

That kind of rule-making, or directive-sending as you call it, will be perceived from time to time and may in fact trench on what is appropriately a policy matter for the board. That is inevitable. When it happens, if there is a transgression, an investigation should take place and it should be stopped. That it happens in a case can be no surprise to anybody familiar with administration.

Mr. Warner: I hope I did not mislead you in any way. I was not suggesting that it was an individual case or circumstance, nor that Scarborough Community Legal Services is the only clinic that has been so adversely affected. The interference is widespread and it is systematic.

Hon. Mr. Scott: You will have to give me examples.

Mr. Warner: I do not want to occupy the entire 16 hours with examples, but what I can suggest is that the Ontario Association of Legal Clinics can easily document for you the systematic interference with the autonomy of the clinics. I think it needs to be dealt with. There is no question about the accountability of public dollars; that is an absolute bottom line. It cannot be used, though, as a smokescreen for developing the policy in a way a group of people sitting in the heart of Toronto want. It should not be some kind of smokescreen for that subterfuge.

Public accountability is absolutely essential. That is one reason you have community people on the board; it is why you have to have your books audited; it is why you send in monthly statements about expenditures; and it is why you

have a yearly meeting to defend yourself. I understand all of that. I am talking about policy direction. Policy direction should be solely developed by that community board and it should be autonomous.

Hon Mr. Scott: I do not want to escalate the debate. I have not been able to go to anything like all 51, but I have been to a number of the clinics and I have met with the clinic association and with representatives of individual clinics in order to determine the extent to which this appears to be a problem.

That some people sense there is a problem is undoubted, but I find that the examples that have been given to me from time to time have to do with the directives that relate to financial eligibility and that relate to personnel policies. Those, I think, are the two dominant examples that occur to me. Personnel policies, the rules for hiring and discharging staff and so on, can be regarded, I suppose, as the policy of the board in the sense that they would be the policy of a business, but I think they more properly relate to accountability for tax dollars.

For example, to take an extreme case, if a clinic decided to hire a consultant at $80,000 per year–it has never happened and I am just taking an unreal example–I do not think it would be an appropriate answer for me to say to this committee: "Oh, well; that is the policy of the board. I cannot interfere, even though it is your tax money." It is a matter that relates to financial accountability to set standards.

It is the same with financial eligibility. I am anxious to strengthen the clinic system, but I do not think you necessarily strengthen it by saying that eligibility requirements, which are at the heart of the plan and the reasons for its existence, can be dealt with by individual clinics as a matter of policy of their own. They are matters that relate to the administration of tax dollars.

If a clinic decides it is going to engage itself in this kind of area of law, take up this kind of issue, deal with that kind of community or focus on these kinds of cases, that is entirely for it to decide, subject to the general rules, which you have referred to. But when you come to personnel policies, eligibility policies or asset policies, it may be that you are dealing not with the policy of how you run a law office or a clinic in the usual sense but rather with standards that have to be met by those institutions that spend taxpayers' money.

Mr. Warner: Then why not go the next step and get rid of the community boards? That is what you are suggesting; that is the path you are down. I can tell you right now that if I received those directives in the Scarborough Community Legal Services, I would be very upset.

I will tell you why. The board determined that its prime target in respect of law reform would be domestic violence, and we were going to devote our major emphasis to that. In that regard we were far more flexible about eligibility guidelines when an individual came before us who was involved in a family violence situation, because we wanted to document the case, we wanted to carry the case, we wanted the statistics out of it and we wanted to carry that case into court, because we are interested in law reform.

That determination was made by the local board. That goes out the window if we follow your route and have a blanket policy for all the clinics across the province. I think that would be a grave mistake.

5:30 p.m.

It is similar in respect of what you call public accountability. The board sets its budget, and in setting its budget it negotiates with its staff. What happens now, of course, is that the message is very clear from the government that it does not want the staff involved in collective agreements, because blanket policy statements undermine collective agreements.

A community board is saying: "We want to negotiate with our staff. They are not civil servants or employees of the province; they are employees of our community, and we wish to deal with them directly and enter into an agreement." We did that in good faith with our staff and now we might as well throw the contract out the window.

That disturbs me. You are losing touch with individual communities. You have to have public accountability, but if you want to deliver this system efficiently and effectively, you also have to respond to the local community concerns.

Hon. Mr. Scott: Yes. During the next period, as you get concrete illustrations of what you describe, I am very anxious for you to let me have them so we can investigate and get to the bottom of them.

Mr. Warner: I would be pleased.

Hon. Mr. Scott: But I think, as a matter of principle, that all of us recognize it would be wrong simply to establish a community board and give it $150,000, which is probably roughly the average clinic grant, and say: "Okay, off you go. Come back next year when you want more."

Some central authority has to make some fundamental rules. I have said that questions of

service provision are largely for the board. I do not want to be too absolute about that because, for example, if all clinics in Toronto want to do domestic violence cases and none of them want to do landlord and tenant cases, the legal aid committee may have to say: "Wait a minute. We have to get a clinic that is prepared to respond to this kind of issue, which is a demand."

That having been said, policy questions in the sense of service should be for the board. You then come to accountability. You are given a cheque for $150,000, and while I am prepared to look at individual restrictions that you find to be overweening or more than necessary, I simply think it is quite appropriate to say there will be a financial eligibility requirement. I do not think you can set up a clinic to provide debenture services to any business that wants to come in the door.

Mr. Warner: That is right.

Hon. Mr. Scott: Financial eligibility is the heart of the plan, and there has to be some such characteristic.

Mr. Warner: I did not deny that, did I?

Hon. Mr. Scott: No.

Mr. Warner: I stressed that.

Hon. Mr. Scott: But you were very concerned about a request by way of directive to look at financial eligibility. All I am saying is that, as a matter of principle, that is quite proper in my view. In the same way, to establish guidelines or directives that are prudent as to salaries is appropriate.

As I say, I do not want to be too categorical, and if there is a concrete illustration of a directive that you think was an abuse of the dividing line, I am anxious to investigate it for you. I have heard of a number and I have investigated them, and it is always a difficult judgement call.

I am not going to defend the Law Society of Upper Canada's administration in every instance; do not misunderstand me. But this is a difficult task, and I am not at the moment convinced there is any major problem. There may be instances that you will want us to deal with.

Mr. Warner: Mr. Chairman, while the minister is clearly wrong, and I would like to pursue this matter, in the interests of covering other items I intend to come back to the problem of the clinics on some other date.

I asked two questions; that was the first one. The second was on the public defender.

Hon. Mr. Scott: The public defender system, on analysis, turns out to be a system–

Mr. Chairman: Did you want supplementaries on this subject?

Ms. Fish: I wanted a supplementary on legal aid clinics. Can we pursue that before we go on to the public defender?

Ms. Gigantes: May I make a proposition on a point of order?

Mr. Chairman: Let us go to the point of order first. Then I will go back to Ms. Fish, and then we will go to the Liberal representative and see where we go from there.

Ms. Gigantes: We had started on vote 1601.

Mr. Chairman: We certainly had.

Ms. Gigantes: Mr. Warner was away on Friday, when he might have had an opportunity to make a general response, as we all did, to the Attorney General's opening remarks. I wonder whether it might be helpful for us to proceed through some of the items in order till we get to the legal clinics and do legal services as they fall.

Mr. Chairman: As the chairman I allowed a little flexibility because Mr. Warner was not here. He indicated that he had read the introductory part of our discussion on estimates in Hansard. I was trying to be, as this chairman will always try to be, completely and unalterably fair.

However, I sense a certain degree of pressure to get on with vote 1601. Rather than debate this for very long, because we may have a vote at 5:45, can we wrap this up in a relatively short time and then go back to your second question when it comes up? I have dealt with one of them, so you are getting 50 per cent of what you have raised by way of a question.

Mr. Warner: Some time before the end of the 16 hours.

Mr. Chairman: A half a loaf is always better than none.

Mr. Warner: Sure.

Ms. Fish: When we rose last time we were on legal aid clinics, and I had indicated that I wanted to pursue one or two points. I will be brief because of the time.

I had raised a very real concern about the Attorney General's remarks, particularly on page 20 of his statement. I felt I could draw no other conclusion than that the Attorney General felt the legal aid clinics in our province were under severe threat. Because of the strength of the language, I was concerned that some of them were in danger of being closed.

I am coming back to this from a slightly different angle on pressure on the clinics. I appreciated the Attorney General's replies giving

some general illustrations of areas where there might be a disagreement with the very establishment of a clinic or some dissatisfaction with the clinic's operation. My concern is that I cannot think of any such concept working–whether in the health field, the social service field or a variety of other fields, not just the legal field–where, if the community clinic does its job, there will not be some degree of disagreement and some degree of contention.

That is a far cry from a circumstance in which the minister responsible, a prominent man, very influential in his area, should use language that would suggest that these complaints are more dangerous to the clinics than simply the complaints one might expect to come forward, which one either can work out with a community before a clinic is established, or ought simply to dismiss because of the Attorney General's own very strong defence of a very important network of legal aid clinics.

Having listened to some of the discussion last time, and particularly listening to parts of the discussion today, I became concerned that perhaps what the Attorney General was signalling in his unusually strong remarks was a danger he perceived that perhaps the law society was somehow going to be shutting down these clinics, or that the nature of the pressure was so severe, by way of correspondence or complaint or so widespread by way of being listened to carefully by his colleagues, that the system was in danger.

I did ask for specific instances of clinics under threat and specific instances of pressure that currently concern the Attorney General in the question of the integrity, importance, preservation and maintenance of our legal aid network. I simply come back to that to understand it, because I take the same concern on this matter that the Attorney General takes on the general statement by our colleague, Mr. Warner, when he speaks of innumerable instances of untoward and inappropriate interference with the board.

5:40 p.m.

Hon. Mr. Scott: I am not going to repeat what I said last time. You have that. You understand that the profession, the benchers, the government and the public do not all have the same view of the role of either the profession or the clinics. None of those four units is monolithic in its view. I gave you examples the other day of difficulties that you sometimes have with the profession. Happily, we have been able to overcome them.

The same difficulties occur with the benchers and with government. I regard my statement as a relatively mild attempt to remind us that we must be on guard to protect this relatively fragile mechanism. To make my point, I want to quote what Mr. McMurtry said about it in 1982 in language that uncharacteristically–I say this knowing him–is much more direct than mine. He said this at page J-230 of the committee's minutes:

"Unfortunately, some of the criticism of legal aid is simply based upon naked self-interest. Some people, having achieved positions of power, take umbrage at the very thought of the legality of their actions being challenged.

"Some governments–not including the one of which I am a part, I hasten to add–have similarly attempted to isolate themselves from effective challenges on the part of the poor, by cutting back the access of the poor to legal services. We have seen this take place to the south of us, in a process vividly described by Maryland Attorney General Stephen Sachs as follows, and I quote: 'To cripple or destroy programs which feed and house and educate and heal the nation's poor is bad enough. But this administration, by seeking to ration justice as well, would strip its critics of the means to fight back. The tactic is familiar–and terribly unfair. In sporting arenas it is called "hitting and holding." On the streets it is called mugging.' "

What Mr. McMurtry was doing, in very direct and aggressive language, was reminding all of us that because these clinics perform such a critical role as part of but not entirely part of the profession, connected with but not part of government and in opposition to the profession and government often–opposite government most of the time–there are those about who would mug them. That is Mr. McMurtry's word. We have to be alert to that risk in whatever quarter it lies, whether it is among this caucus, that caucus, the benchers, the profession, groups of landlords or other interests in the community who take umbrage at the fact that they cannot get their way when legal services are provided to the poor.

Ms. Fish: I appreciate the Attorney General's review of one of his predecessors' remarks. His officials will doubtless be able to provide the contextual framework for some of those remarks, partially hinted at in the section that was quoted, which dealt with a sudden and aggressive move, particularly in the United States and reported on widely here, to attack and undermine legal aid clinics. He dealt with some specific efforts that he was prepared to delineate in suggestions here

that he felt he had to deal with as the Attorney General.

If you are saying you do not feel that particular circumstances are coming before you at this point and if it is a general statement of support, I am pleased to have that and to know there are no particular clinics that you feel are threatened and that there are no particular requests in front of you in this regard. I am pleased to have your restatement of a position that has been the position of Attorneys General for some time: a strong support of this very important network.

Hon. Mr. Scott: That is how we stand.

Mr. Polsinelli: I am going to be brief in my remarks. My experience with community legal aid clinics has been somewhat different from Mr. Warner's. While Mr. Warner was serving as a member of the board, I was doing front-line legal work at one of the community legal clinics in Toronto.

That experience has expanded my horizons and sensitized me to the problems legal aid clinics face and, in particular, the problems the clients of the legal clinics face. I am encouraged by the Attorney General's remarks that the legal aid clinic system in Ontario should be strengthened and expanded. I hope he carries forward with that commitment.

I am also an advocate of the local boards determining the priorities and the policies of the individual clinics. Each community is different and has its own priorities. Each local board should be allowed to determine the priorities of the clinic and the community.

I also understand the necessity of a public accountability system being in place since these clinics are making use of and expending public moneys. However, we should be quite aware and realize that once the bureaucrats start imposing financial eligibility requirements and other requirements on how funds can be expended, then inevitably those requirements will affect the policy directions that the clinics are allowed to take.

What I would like is some assurance from the Attorney General that his ministry will monitor those requirements and ensure that they do not in any substantial way affect the ability of the local boards to set their own priorities and their own policies.

Hon. Mr. Scott: I accept that generally. I want to make plain that I view the setting of policy that I described to Mr. Warner as appropriate for a local board. Quite rightly it will be for the legal aid committee to decide what kind of clinic we are going to have, subject to creating a board to run it.

For example, there are many communities out there that do not have clinics and perhaps should have clinics. Happily, we have been able to meet some of the needs. I am sure the people of Scarborough would have liked another legal aid clinic and perhaps there is a need for it there. But the injured workers' consultants or the Advocacy Resource Centre for the Handicapped may be able to make claims that are every bit as powerful even though they are not a geographic community. Someone has to decide where the clinic dollars are to go when the clinics are started up. That is an appropriate policy determination to be made by the central body. Otherwise, those areas of greatest need might not get served.

Subject to that and subject to the assignment of a general policy area in that sense to a clinic, whether you are going to be a neighbourhood clinic or an injured workers' clinic or a disabled persons' clinic, I understand what you both have to say about policy.

Mr. Chairman: Mr. O'Connor, you have been very patient and we will go to you now.

Mr. O'Connor: I have nothing to add to the legal aid debate or to add in questions on it for the time being, except I bring us back to the vote that is under consideration. I had some brief questions. If I may refer to the brief and turn to page 17 of the green book. I note that the professional legal staff for the policy development section of the ministry has been increased by three lawyers.

Is that a reflection of increased activity in the policy development area or is it merely a reflection of this government's intention to eliminate the policy ministries that previously existed and this is the transfer of personnel from that function over to the Attorney General's office?

Hon. Mr. Scott: It is not a function of the discontinuance of the policy secretariats; it is a function of increased work load.

5:50 p.m.

Mr. O'Connor: That then brings us to page 18, where there is a description of the programs in the policy development areas that are under analysis. Again, really only for the sake of gaining information, there are a number of areas under study and I will quote from the second paragraph. There is reference made to "a complete overhaul of the justice of the peace system, new procedures in relation to group defamation, revisions to the criminal injuries compensation legislation."

I would ask the Attorney General for further specifics on those three; some indication of the direction we are going and some idea of the timing when legislation or policy statements might be made.

I have some familiarity with the other areas mentioned there. It is those three I would like more information on. The first two particularly would be considerable changes to the existing system. I am wondering if there might be legislation or policy statements this year in that area, and if so, the general costs they would involve. I want to know what direction we are going in those areas.

Hon. Mr. Scott: I can answer part of the question now. Professor Mewett did a report on the Justices of the Peace Act which was under the auspices of the ministry. That has led to a complete review of the justice of the peace system in an effort to rationalize and simplify it. This is in the light of the fact the Charter of Rights is going to impose obligations such as issuing warrants and so on, on justices of the peace in and out of the courtroom which I will not say were not as important as at an earlier time but are more likely to be litigious now.

The justice of the peace under the charter is going to have an even greater role than he had before. We are therefore developing a new statute. There are some problems of consultation that remain to be dealt with and some financial problems that have to be resolved before we can make any announcements with respect to that.

We have been reviewing the Criminal Injuries Compensation Board. I have looked into it particularly. The respected chairman is an old colleague of many members here and a friend of mine. There is a concern, expressed earlier in my statement, that the kinds of award may be out of date. A good deal of time has been devoted to examining that question and examining ways in which the work of the board can be facilitated and made more effective. We hope to have something for my colleagues on that before very long. I am not sure how much of this I am allowed to tell you, but I have told you that.

Mr. O'Connor: So far you have not told us very much at all, with the greatest of respect.

Hon. Mr. Scott: Do you not think so? Is there anything you would like to ask about this?

Mr. O'Connor: These are policy initiatives. They are areas you are investigating. It is our function on this committee to obtain as much information as possible on the direction the ministry is moving.

Hon. Mr. Scott: In the justice of the peace area, there are six kinds of justices of the peace now with specific duties. They are a loyal band but their backgrounds are eclectic, to say the least. Their training for their roles is varied. Their responsibilities are mixed and because of their important duties under the charter it was thought appropriate to attempt to rationalize that system to reduce the categories of the justices of the peace and to put them on a kind of a professional basis. They are becoming more and more like judges in their communities. Many of them take court as well as performing the issuance of warrants, hearing bail applications and so on.

It is an effort to professionalize the justice of the peace system, to remove it from the ad hockery that we have been familiar with in the past. We will have legislation in due course that will give you pleasure in every detail.

Mr. O'Connor: I expect it will. I am not sure what the Attorney General means by the word "eclectic." If it means Tory, then I agree with him.

Hon. Mr. Scott: No, no, I did not mean that. Was police complaints the third item, just before we wrap up?

Mr. O'Connor: No, the group defamation.

Hon. Mr. Scott: Mr. McMurtry invited Pat Lawlor to prepare a report that dealt with this subject among other things. It has come to hand and the question of group defamation is being considered within the department and by me to determine what, if any, recommendations I should make to my cabinet colleagues.

From my point of view, the problem of group defamation is extraordinarily difficult. If it is adopted, it represents a major departure from the traditional approach of our law to remedy this situation. The subject of group defamation is amazingly complex because you have to decide what groups are going to have the process available to them. I presume not every group collected for the moment will be allowed to sue. Presumably it will be racial groups, groups associated with gender or sexual preference. There are a number of serious questions.

When you have decided all those, the next one that has to be canvassed is what mechanism is going to be utilized to deal with this. I can tell you frankly there are some very difficult judgements to be made. One of them is, do you deal with this area at all? We are working on that and I cannot promise we will have anything for you quite as quickly as on the other matters.

Ms. Fish: Is that related to concerns around the implementation of prosecution under the hate literature laws?

Hon. Mr. Scott: It overlaps that. Interestingly enough, apropos of what Ms. Gigantes said earlier, it also overlaps a lot of human rights considerations. Presumably, in group defamation, the people who will seek remedies will be racial or religious groups and others, those groups, for example, who have been written about in the press or something in a defamatory way.

One major question is, how does that tie in with human rights legislation? Is it really part of it to begin with or is it, in fact, a separate kind of remedy akin to a libel action in a courtroom? It is the most wonderful thing in the world to say we are going to have group defamation laws, but it is an area of very great novelty and major consequence, not only for the successful applicants in the cases but for the community, so as one approaches it, one wants to be very careful before deciding what the appropriate response is.

Ms. Gigantes: I wonder if I could repeat my request that on vote 1601 we get a little update on each of the items. Skipping ahead, because it is in the same area, I feel the same way about 1604, item 1.2, that we have a brief description in written terms from the ministry. I do not care if it comes tomorrow or in two weeks.

Hon. Mr. Scott: Do you mean a statement of policy development activities?

Ms. Gigantes: Yes, and what is happening, exactly where they are at and where they are headed.

Ms. Fish: I had a similar information request I would like at least to table before we adjourn. The note on the bottom of page 18 about the office of native affairs having been transferred, and so on and so forth, would appear to be a note on the policy development section and yet I think I heard the Attorney General reply to my colleague that changes in staffing as shown in the policy section arose in no way from the transfer of native affairs.

Hon. Mr. Scott: That is true.

Ms. Fish: I am sorry, I was not challenging whether it was true. I was going to say, in view of the note and the Attorney General's reply, could we please have tabled the information on the staff of native affairs who have been absorbed by the ministry and where, and on the budget for native affairs which has been received as an in-house transfer, where it has been applied, so we might understand what we are looking at there?

Similarly, unless it appears separately and I have not read quite carefully enough, I would welcome an understanding for the women's directorate, unless that continues to be dealt with as an entirely separate, autonomous unit.

Hon. Mr. Scott: I have two observations. The people and funds that have been transferred are the ones that formed the native affairs unit in the policy secretariat for natural resources in the previous government. I can provide you with details of that. Would you permit me to defer it until we deal with native issues?

Ms. Fish: I am happy to have it deferred until a later time. I was only saying I wanted to put that request there because the note raised a question in my mind and I was having difficulty following through with respect to the way–

Hon. Mr. Scott: That is where those people came from and I will get you details when we turn to that question.

Ms. Fish: Later in the estimates, you mean?

Hon. Mr. Scott: Yes.

Ms. Fish: Similarly, can you tell me if the women's directorate is now part of this or is it a separate, autonomous unit?

Hon. Mr. Scott: Though I am the minister responsible for women's issues, my support system is the women's directorate. The women's directorate seems to be a self-contained unit which operates independent of any line department. Like everybody who wants to live in the public service, they have to have a deputy minister to sign things.

The deputy minister for the women's directorate is the Deputy Minister of Government Services. He provides a formal deputy's function for the women's directorate. He, for example, does not supervise the generation of policy material or cabinet submissions. That is done by me and the directorate. He is really a signing officer.

Ms. Fish: What I want to know is where I and this committee will find the estimates for the women's directorate.

Hon. Mr. Scott: You will not find it in here. It will be provided.

Ms. Fish: Not in here. But what did come to you as a result of the dissolution of the resources policy will be found in here?

Hon. Mr. Scott: Yes.

Mr. Chairman: Members of the committee, we have exhausted the time allowed for our discussions this afternoon so we can adjourn until one o'clock tomorrow afternoon.

The committee adjourned at 6:03 p.m.

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From the Ministry of the Attorney General:

Campbell, A., Deputy Attorney General
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Ontario

No. J-3

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Standing Committee on Administration of Justice
Estimates, Ministry of the Attorney General

First Session, 33rd Parliament
Friday, November 8, 1985

Speaker: Honourable H. A. Edighoffer
Clerk: R. G. Lewis, QC

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Friday, November 8, 1985

The committee met at 11:53 a.m. in room 151.

ESTIMATES, MINISTRY OF THE ATTORNEY GENERAL
(continued)

On vote 1601, law officer of the crown program:

Mr. Chairman: We will continue our discussion of the estimates. We are on vote 1601. If you would like to start disposing of some of the subsections of vote 1601, I would be more than favourably inclined to move in that direction so that we could move on to other parts of the budget. We have not actually dealt with or passed any items as of this point because we have had a relatively free-wheeling discussion to allow all members to question the minister on his opening statement.

Ms. Gigantes: This is a weighty item, but I think people would like to raise a number of questions about legal aid and the law clinics. I wonder whether we could first dispose of everything up to that section. I have only one further question on 1601.

Mr. Chairman: I am not trying to close off discussion on the legal aid clinics and other items that were raised. I am suggesting we deal with this in something like chronological order. Perhaps we could deal with vote 1601, address our questions specifically to that page and then proceed to deal with the other subjects as they come up.

Ms. Gigantes: The minister made a statement concerning his efforts to try to beef up how we deal with drinking and driving in this province by extending suspensions for first and subsequent offences. I wonder whether we could spend a few minutes talking about what kind of work is being done in this countermeasures program, particularly looking at page 24 that describes the operations schedule for 1985-86.

I am very interested in the last two items. It seems to me that with drinking and driving we are dealing with a certain number of people who are simply foolish and unwise and who put the rest of us in jeopardy with their foolishness. They may get caught and be dealt with quite severely. One hopes so. That will be the end of that. They will not do it again and all their friends, neighbours, relatives and so on will be aware of the case and the effect will spread out in a very positive sense.

However, we are also dealing with hard-core people who are alcoholics or chronic heavy drinkers, who keep on drinking and driving even when their licences are suspended. I would like to get an understanding from the minister how the measures he is talking about today relate to what we are learning about the problem. What are his expectations of how we will be able to develop programs which deal specifically with that hard-core group. Does he think suspensions and people having pictures on their drivers' licences, which I instinctively dislike, is an answer to dealing with that problem of repeat offenders? In other words, I want to try to get this program into that system of examination I suggested in my opening remarks. What is the problem? What is it we are trying to do about it? What kinds of results can we expect?

I would also like to ask about incarceration on drinking and driving offences and how it compares to rates of incarceration in other provinces. I would like to ask specifically about the federal legislation in the Criminal Code. I understand it now permits an alcohol treatment program for chronic offenders in place of incarceration. Alberta, the Northwest Territories and Prince Edward Island have signed on to that way of proceeding under the federal code and Ontario has not.

Perhaps I will leave it at that for the moment.

Hon. Mr. Scott: The question is an important but difficult one. I am not sure the categories of accused can be quite as neatly defined as the member suggests and I am not certain they can be identified out there on the street with the kind of precision that would enable us to categorize them in that way.

Let me tell you exactly how I see the issue. First of all, let me observe that I am dealing with some matters that are within the jurisdiction of this ministry and also some matters within the jurisdiction of the Ministry of Transportation and Communications which regulates licensing of drivers.

The first thing is that the assumption, in creating an offence and prosecuting it is, in part, that the penalty will form some kind of a deterrent either to future conduct by the accused

or to others who may have seen what happened to the first accused. The range of penalties are imprisonment, suspension of licence and fine.

One of the realities is that if you suspend the licence, there is the risk that a person will none the less drive. The deterrent effect of the suspension is very much reduced because he has shown that, although it has been suspended, he is going out to drive anyway and he can do so with impunity.

The purpose of putting photographs on drivers' licences, which is the responsibility of the Ministry of Transportation and Communications, is really to enable us to apprehend more effectively those who drive while their licence is under suspension. In a city such as Metropolitan Toronto, there are thousands of persons whose licences have been suspended and there may be many persons who are none the less driving.

Ms. Gigantes: How many of those would be using somebody else's licence?

Hon. Mr. Scott: We do not know because the only way you can find out how many there are is to determine how many you have apprehended on a spot-check basis and try to extrapolate that against the number of potential drivers. It is a very difficult, highly problematic and probably completely unreliable statistical exercise. What has been said is that the figure may be in the dozens of thousands.

12 noon

Ms. Gigantes: You are not really getting to what is concerning me here. On the question of the photographs, in particular, if I am a prohibited driver and go out and am stopped, tested and charged with drunk driving, it does not matter that I have somebody else's licence. In terms of society as a whole, it does not matter whose licence I produce, whether it has a picture on it or not.

Hon. Mr. Scott: Yes, it does.

Ms. Gigantes: Tell me why.

Hon. Mr. Scott: If you were convicted of impaired driving and your licence was suspended for a year and you elected to drive, what you now would do, if you were deceitful, is get another driver's licence.

You could get a phoney driver's licence, or you could get somebody else's driver's licence as long as it did not have the name Jane Jones, age 68 years, on it, which would immediately strike a police officer as suspicious when you presented it to him. He would have no way of determining whether that licence was yours or not as long as you fitted the general physical description on the licence, which is very limited. I am not certain what the physical description is.

Mr. Warner: Hair colour.

Hon. Mr. Scott: Hair colour. As long as you meet that general description, he would have no way of knowing whether that licence was yours or not.

Ms. Gigantes: I see where I am having a problem. There are a lot of people whose licences are under suspension and the reason may not be for drinking and driving. In fact, when they get stopped again, it may not be for drinking and driving. If you are trying to relate the need to have pictures on licences to the drinking and driving program, I would like to know the relationship between that and having pictures on licences.

Hon. Mr. Scott: It means that the driver whose licence has been suspended and who is stopped by a police officer and asked to produce his licence, for whatever reason, is going to be caught immediately if he is not shown in the picture on the licence.

The policeman is going to say: "This is not a picture of you. This is a picture of somebody else."

It does not exclude a high-class forgery industry that can reconstitute the whole licence with the photograph, but it goes a major way to discourage people from entering into this kind of unlawful activity.

Ms. Gigantes: True, but considering that we are contemplating putting every person who seeks the privilege of driving through a course of action where he or she must have what amounts to an identity card with a picture on it, I would like to know how that is going substantially to improve our ability to catch drivers who have had their licences suspended for drinking and driving and make them pay a penalty and how that will assist us in getting rid of them.

Hon. Mr. Scott: It is going substantially to improve our ability because it is going to make the penalty more effective. If you make it more effective, the penalty will have its maximum deterrent effect.

Let me put this hypothetical situation. Let us assume there are 100,000 drivers whose licenses have been suspended in the province for alcohol-related offences. Let us assume that 40,000 of them drive their vehicles all the time or on occasion. Those people are thumbing their noses at the penalty, which is not a deterrent for them or for those people to whom they describe their

victory. People get a sense of when you can thumb your nose at the enforcement provisions.

The photograph on the licence very substantially reduces your ability to drive with impunity while your licence is under suspension. It therefore very substantially increases the effectiveness of the impaired driving penalty of suspension, and we hope that in the end it increases the reality that people thinking of drinking and driving will be deterred.

Ms. Gigantes: I can understand the proposition you put forward. What I am interested in finding out is, first, how many people have had their licences suspended for drinking and driving, and, second, how many of those go back and drink and drive again and get caught. We can know only about the ones who get caught; we cannot know about the ones who do not get caught. If they do not get caught, having their picture on the licence is not going to help–

Hon. Mr. Scott: Yes, it is.

Ms. Gigantes: –unless they have a false licence, either somebody else's licence or another in their own name.

Hon. Mr. Scott: The assumption, respectfully, is wrong if you are saying that a large number of persons who have been convicted of impaired driving and have had their licence suspended will none the less continue to drive.

Ms. Gigantes: No. I am saying we should know how many do. We know only how many get caught. If they are not apprehended by the police for one reason or another–

Hon. Mr. Scott: Ms. Gigantes, I would like to know how many do. Can you tell me how to find out how many do, without taking a sample of the entire population and asking them whether they have committed a criminal offence recently? I simply do not know how to find that out.

We can find the number of people who are convicted for the first time and therefore the number of people whose licences have been suspended for three months. We can find out–I cannot, but the Ministry of Transportation and Communications can–the number who have been convicted a second time and have taken the second suspension. They can tell you the number of people who have been apprehended for driving while their licence was under suspension, but that does not tell you what you want to know.

Ms. Gigantes: Can they also tell us how many of the people who were driving while their licence was suspended were using an inappropriate licence, either not their own or–

Hon. Mr. Scott: No, because you do not catch those people.

Ms. Gigantes: We assume we do not catch them.

Hon. Mr. Scott: Let me begin with the proposition that a person who is going to break the law by driving while his licence is under suspension and who is going to achieve that purpose by doing something unlawful–that is, by presenting an unlawful licence, a licence that is in the name of somebody else–has a certain amount of guile.

You are not going to present a licence, to get back to our first example, that is in a man's name, because that would be silly. You would immediately be caught out. Therefore, we recognize that people who are determined to break the law by driving while their licence is under suspension obtain licences that would not cause any comment if they were inspected by a police officer.

Perhaps I should not be anecdotal if this is being taken down, but years ago if you were at college and you wanted to go to a tavern, if you were not 18, you had to have identification and you were determined to break the law by producing somebody else's ID, you would not produce the ID of a 50-year-old man. You would produce that of a friend of yours who was 19. Why? Because you want to select an ID for the purpose that will not attract suspicion. That is why we cannot answer your question. The people we are concerned about are not apprehended.

Ms. Gigantes: I understand what you are saying.

I would like to know the number of people who are convicted, who have a three-month suspension. I would like to know the number of people who are convicted again and convicted of driving without a licence. Furthermore, I would like to know why we cannot set up a system that requires people getting a licence to produce an ID, which assures that those are legitimate licences, instead of requiring everybody who gets a licence to carry an ID card.

Hon. Mr. Scott: We could create a scheme, which might go some distance to solve the problem, that would require a person invited by a police officer to produce his licence to produce not only his licence but also his social insurance card and some other supporting identity.

12:10 p.m.

Ms. Gigantes: Is he not supposed to produce his insurance card and his car registration card too?

Hon. Mr. Scott: Yes.

Ms. Gigantes: Does that not help?

Hon. Mr. Scott: It may help, but what I am telling you is that from our experience we know that a substantial number of people drive while their licence is under suspension. If only one or two were doing it, we would not be concerned.

Ms. Gigantes: I understand the problem, but I am wondering about the solution.

Hon. Mr. Scott: One solution is precisely the one you have suggested; you could be asked to produce your driver's licence, your social insurance card and a host of other supporting documentation as you might be asked to do if you presented a Visa card commercially. That course is not necessarily effective because those who want to break the law will simply get supporting documentation. If I want to drive a car and my brother is going to lend me his licence, he is also going to lend me his Visa card and his social insurance card. I will say: "Lend me your wallet. I am going driving tonight."

The one way to resolve that, not entirely but to a very great degree, is to require the photograph. That will–

Ms. Gigantes: We know–

Interjection: What about identical twins?

Hon. Mr. Scott: Identical twins are a problem.

Mr. Callahan: On a point of order–

Mr. Chairman: Excuse me, Minister. I have a point of order, and I have a supplementary to the question.

Mr. Callahan: With all due respect to my colleague, what does this have to do with the estimates?

Ms. Gigantes: It has everything to do with them.

Mr. Callahan: We are here discussing the estimates. You are debating the policy. With respect, what does it have to do with the estimates?

Ms. Gigantes: That is what the estimates are about: what we are spending our money on. This happens to be one of the few areas where there has been a real initiative over the past few years. I believe it has been an effective initiative. I am concerned about making sure that when we carry this initiative forward, we are doing it on a factual base that is going to make it even more effective.

Hon. Mr. Scott: Let me just observe that of all the methods of detecting those driving under suspension, short of mammoth spot checks all across the city, the photograph is the most effective mechanism I am aware of. If there is a better way, I will be delighted to hear it.

Ms. Gigantes: At the same time, you say we do not know how many people are driving with licences that do not belong to them or that are illegal licences; so how do we know it is effective? I will agree with you because you can produce the statistics that show a certain number of people who have their licences suspended for drinking and driving go back and do it again. You can produce the statistics.

Hon. Mr. Scott: There are certain things the effectiveness of which cannot be conclusively demonstrated. I cannot conclusively demonstrate that increasing suspensions will have any effect. I cannot conclusively demonstrate that the imposition of penalties is a deterrent to crime. It is the argument one makes when one comes to first-year law school to talk about criminal law. What is its purpose?

Ms. Gigantes: Yes, but this is a penalty that in a sense is being imposed on everyone to catch a group we cannot even define in numerical terms.

Hon. Mr. Scott: The difference between you and me is that I do not regard it as a penalty imposed on everyone, because I do not regard a driver's licence as a right.

Ms. Gigantes: If one seeks the right, then this is a new requirement that is contestable on civil liberties grounds.

Hon. Mr. Scott: I do not believe it will succeed.

Ms. Gigantes: When I say contestable, I do not mean in court. It is something one has to consider very seriously on civil liberties grounds.

Hon. Mr. Scott: I do not understand that, I must say.

Mr. Polsinelli: It is delving into the realm of the philosophical or the theological.

Hon. Mr. Scott: It is not theological yet, but it is philosophical, and I respond to philosophical questions–

Ms. Gigantes: I will not give a speech to explain why, but I think the Attorney General understands.

Hon. Mr. Scott: I understand, but frankly I do not regard a person licensed to drive being asked to make his photograph available on the licence as an infringement of that person's civil liberties any more than when he is obliged to disclose whether he has medical ailments that may impinge on driving or when he is obliged to

disclose his age or a host of other factors. Those things are necessary for the operation of a licensing system in the interests of the public.

Ms. Gigantes: I am satisfied to leave that. May I ask two questions?

Mr. Chairman: In fairness, I must go to other members. I have a supplementary.

Ms. Gigantes: I do not care whether they are answered now. I asked two questions relating to the two items under the program development schedule for 1985-86.

Mr. Chairman: The supplementary is on your question. It is from Mr. O'Connor, and we will come back to that. I have some speakers who want to get on. We started about 11:45 a.m., and I have allowed half an hour for you. There are about 45 minutes remaining, and there are all the other members who want to raise questions; so I am trying to be fair.

Ms. Gigantes: It was not half an hour.

Mr. Chairman: It is approximate.

Ms. Gigantes: I am not contesting your judgement.

Mr. Chairman: I am only trying to indicate the balance, equity and fairness of the ruling the chairman is bringing down with respect to time.

By the way, I ruled Ms. Gigantes's question in order because it comes under item 3, policy development. I was going to respond to Mr. Callahan and simply say it is an appropriate question in the context of vote 1601.

Mr. O'Connor: By way of a very brief supplementary comment, and I hope not to be in the position too often of complimenting the Attorney General on the initiatives he takes, I would like to assist my friend Ms. Gigantes with regard to the issue she has been speaking on for something near half an hour.

Mr. Chairman: Or thereabouts.

Mr. O'Connor: Yes. I can assist the Attorney General by advising him from practical experience concerning the incidence of people caught and charged with driving while under suspension who, when the facts are revealed to the court, are determined to have been driving with someone else's licence. It is quite significant. There are a number of them being caught. We might then assume there is perhaps a more significant number who are not caught, who try it and get away with it for some reason or other.

The requirement of a photo on the licence will go a long way in two directions. First, it will immediately catch people who attempt to befuddle police officers with phoney licences. Second, in the majority of cases of people who think about using someone else's licence or identification, knowing the difficulty of going about falsifying it with a different photo, they will be considerably dissuaded. I think the numbers will be cut down.

I simply cannot agree with Ms. Gigantes that there is any infringement on personal privacy, downside risk or whatever her argument was with regard to the requirement of a photo.

Ms. Gigantes: I was not making the argument; so do not–

Mr. O'Connor: We require photos on any number of pieces of identification we now use.

Mr. Chairman: I am sure we will hear from you again on this point, Ms. Gigantes.

Mr. O'Connor: I think that is the most appropriate step to be taking, and I think it will be of significant assistance in this problem of people driving with other people's licences. It is not the be-all and end-all, but it is a step in the right direction. Enforcing this longer licence suspension program is going to put in the minds of some people the thought that they will try to get another licence. I think the two go hand in hand.

Those are my brief remarks. I reserve my right to speak on this matter at a later time.

Mr. D. R. Cooke: I have a new question. As a lifelong civil libertarian, I endorse putting pictures on licences.

My concern has to do with the measures announced in the House this morning and about what might be lack of discretion granted either to judges or to the ministry with regard to provisional licences. I understand such licences are still under consideration in the ministry.

I am concerned about the large increase in the budget for this sort of program, which is excellent. Will there be moneys available to administer a program that would result in provisional licences should the Legislature decide, for instance, that a first-offence impaired driver should be allowed to apply for a provisional licence for certain purposes, say for the last six months of his suspension, provided he follows through on a program? Will that program be available?

12:20 p.m.

Hon. Mr. Scott: While I think it is fair to say that our ministry has canvassed all the options and will continue to look openly at every kind of issue this presents–I am certain the Ministry of Transportation and Communications will as well–and while we do not say that anything is foreclosed, I must frankly tell you we are not at the moment disposed to consider provisional

licences, if by that you mean permitting a judge the discretion to allow part of the suspension to be lifted or discontinued.

One of the difficulties with that kind of arrangement is that if you are going to go to a provisional system, it is difficult to understand what portion of the suspension would be regarded as provisional. In other words, you are going to have to say either the whole suspension is provisional or a part of it is provisional; that is, six months. It seems to me the hardship case you no doubt have in the back of your mind, of the man who drives for a living and is the sole support of his widowed mother as well as his family, makes as good a case for a totally provisional licence as for a partially provisional one.

I do not at the moment see any virtue in allowing any provisional licences, bearing in mind the climate and the great social and personal cost the exercise of this privilege causes. I think you heard the statement of the Minister of Transportation and Communications (Mr. Fulton). He is looking at mechanisms to terminate licences for those who are convicted repeatedly of alcohol-related offences. I have no doubt that under that mechanism, which will terminate the driving privilege, period, there will have to be a mechanism to permit reinstatement of licences. However, that is a different question.

Mr. D. R. Cooke: I understand he is also looking at provisional licences in some areas. That is an understanding I got this morning from one of his officials. I agree with what you are saying in regard to hardship cases. In some hardship cases perhaps there should not be a suspension, but I do not expect the legislation to say that.

I am concerned about motivation as well. If you are going to motivate someone who others may feel needs to get hold of a problem of alcohol abuse, in a number of situations he may be the last person to agree about the need to get hold of his problem. Perhaps there is a mechanism whereby you could say to that person, "If you get involved in a program and over the course of six or nine months you can show to those operating the program that you have a handle on your problem, perhaps you can have a licence for provisional purposes to drive to and from work." It might be something of that nature. To say, "You have been convicted and your licence is gone," or even to say, "It is gone for the rest of your life," might cause a lot of people to throw up their hands and break the law.

Hon. Mr. Scott: I think this takes us back to Ms. Gigantes's division of the categories. There may be a percentage; I do not want to be quoted on it, but I think some writers I have seen suggest that perhaps as many as 30 per cent of persons apprehended have a serious alcohol problem. It seems to me that whatever mechanism we use, as long as they have a serious alcohol problem and own automobiles, we had better do everything we can to see that they do not have the right to drive automobiles until the alcohol problem has been corrected.

If we could isolate that category, I would be much more stringent than I am now in making this proposal. The balance of the category is people who do not have an alcohol problem as it is commonly understood. They are not compulsive drinkers or alcoholics. They are people who are social drinkers who, quite often with the best will in the world, fail to think about the consequences of their conduct.

I am sure there would be no one in the Legislature, but there might be people outside, who would remember instances that did not occur to them but occurred to others near them in which you are invited to a party. You know liquor is going to be served at the party. You intend to have only one drink and then leave. You drive to the party. It turns out to be fun. You have more than one drink, and instead of leaving your car there and getting a lift home, you take the chance. That happens all too frequently.

Why do you take the chance? You are not taking a chance at the moment you are leaving the party, when you have had eight drinks, because you had such a great time. The chance you took was when you went to the party with the car, knowing the potential, large or small, that at 12 o'clock in the evening your judgement would be clouded.

It is to remind those people when they decide at the beginning of the evening, "I am going to be all right tonight; so I can take the car safely," that they cannot safely make that kind of judgement, because we are all human. It is to remind them at that moment, to make them think before they go out, "This is the consequence if there is a slipup, if I make a mistake."

Those people are not criminals in the traditional sense, though the act is a crime and should be. Those are people who do not focus on the issue at the relevant moment, and I think suspensions are a significant way of making them focus.

Mr. D. R. Cooke: I agree. But surely you want to have them focus on the relevant problem at that moment, which you say is when they are

on their way to the party. Surely you do not want to leave them with the feeling that they have been overhit because of a moment of judgement and that there is no way they can address that.

Surely during that year, if they can get themselves involved in a program of understanding, they are not going to make the mistake again. There should be some motivation to do that, and they are probably not going to do it unless there is something at the end of the rainbow that can improve their success. That is what we do when we incarcerate people: We give them time off for good behaviour.

Hon. Mr. Scott: It seems to me this proposal holds the prospect of substantial benefits. From my point of view, it has very little downside to it. No one will lose his licence if he made the right judgement, and the right judgement is to not drive your car. If he made the wrong judgement, he will suffer this suspension; and I hope he will not make the wrong judgement again, because he will remember what the wrong judgement cost him.

It is not a question of being right or wrong in your judgement; it is the business of making the cautious judgement, and I hope other people will see that and make the cautious and prudent judgement. Why is it important? It is important because of the carnage it has caused, because of the innocent people who are killed or traumatized, whose lives are snuffed out because a less than cautious judgement was made. I have had a lot of tough decisions to make in the ministry in the 16 weeks I have been here. This was not one of them.

Mr. Callahan: I have a new question. I notice that one of the items under "Responsibility" is to co-ordinate the efforts of government ministries involved in drinking-driving countermeasures. Within the framework of this budget or some other estimate, are there moneys for a program to deal with the nub of the problem?

It is one thing to impose penalties like licence suspensions and incarceration, but if there is nothing other than a revolving door through which they are going to come back out, this has not solved the problem; all it has done is to put it aside.

On that aspect, is there something in these estimates, or perhaps in the estimates of the Ministry of Health, for instance, to enlarge the program of Dr. Gordon Bell? This one private service has had an absolutely fantastic response in treating people with alcohol problems.

Hon. Mr. Scott: The Ministry of Correctional Services has a substantial number of programs that deal with that kind of thing in a correctional setting.

Mr. Callahan: Are these new programs?

12:30 p.m.

Hon. Mr. Scott: Everything is new to me.

By and large, these are programs run by the Ministry of Correctional Services. If I am not wrong, the Ministry of Community and Social Services also has some role to play in this field. The Ministry of the Attorney General is not really the line social ministry to provide that kind of program.

I am very supportive, as I know the member is, of that kind of initiative, but we must always be mindful this problem is not primarily or entirely one that relates to alcoholics. I do not know whether a survey has been done, but I suspect from looking at my own clientele when I was in private practice, very few of those charged and convicted of impaired driving would be classified as anything like alcoholics. They are predominantly social drinkers.

One of the observations I made in practice was that it was quite often the least sophisticated drinkers who would find themselves apprehended. The person who goes out routinely to a party and knows he cannot handle his liquor may have wisened up. It is the person who is quite often unable to assess the impact of alcohol upon him who will not make the prudent or cautious judgement. That is what sentencing and deterrents are all about, to encourage people to think about this. It is part of a general awareness program.

I was thinking earlier that if the member took a look at these kinds of offences–I am older than he is, but if he took himself back–

Mr. Callahan: Not much.

Hon. Mr. Scott: No, but if he took himself back 15 or 20 years and remembered how impaired driving was regarded by the public, our profession and the courts, and recognize the way it is regarded today, he will see an enormous difference in public perception. That is the result not only of the horrible accidents that have been occasioned, but also the fruit of educational programs. That is why the ministry is so concerned to engage in this kind of activity.

While we are on the subject, I just want to bring the member for Oakville (Mr. O'Connor) up to date, because I respond very positively to every radio interview he gives.

Mr. O'Connor: It really got to you, did it not?

Hon. Mr. Scott: Yes, and I want him to have the most up-to-date and accurate figures for his next interview.

The 1984-85 estimate for drinking/driving countermeasures, item 6, vote 1601, was $300,000. The estimate for this year is $614,500. Last year, the actual expenditure was $1,017,900. In order to achieve that, last year, above the estimate, some $717,900 was transferred from the budget of information services to the drinking/driving countermeasures program. That included the cost of the film, Make Sure it Wasn't You, which was $155,000; the creative work for the campaign at Christmas, which was $129,000; the media buy for the Christmas campaign, which was $128,000; the outdoor advertising at $70,000; and promotional material, reports on conferences and so on, of $225,000.

In 1985-86, $400,000 of the budget of information services has been earmarked for drinking/driving activities, and that will be the media buy for the summer campaign of $200,000 and a similar amount for the Christmas 1985 campaign. Therefore, to compare estimates, we have doubled it this year. To compare actual figures, take the estimated amount plus the component of the information services budget, which totalled a figure of $1,014,500, so we are $3,000 below what was actually expended last year.

Mr. O'Connor: I thank the Attorney General for those updated figures, but he will understand that in reading the estimates it is not obvious those figures are there.

Hon. Mr. Scott: No, I agree.

Mr. O'Connor: It would have been helpful to have been advised that these expenditures were anticipated.

Hon. Mr. Scott: I quite agree. One of the troubles, and I am learning about it–and I am sure the honourable member, equally new to the process, has the same problem–is that we do not know if a budget item gets the advantage of another budget item. I would be delighted to assist him in his radio campaign. He just has to give me a call and I will be happy to check his figures for him.

Mr. Chairman: You will even sit there and monitor the words that are spoken, I am sure.

Mr. Callahan: I have one further item. It is not within this particular estimate but in the estimate providing for crown attorneys' salaries, for courtroom space and so on.

Ms. Gigantes: Mr. Chairman, can we stick to one item so we can get through this?

Mr. Callahan: It is relevant to this, Mr. Chairman. Has there been provision for the reality I would envisage that with these increased penalties there will be greater activity in terms of defending these particular types of cases. That is why I ask, because they are recognized within the budget for the courts and the crown attorneys and so on.

Hon. Mr. Scott: We have attempted to make the estimates realistic and not to build in unnecessary cushions because that is against the public interest in the budgetary process.

We contemplate that there may be some marginal increase in terms of defences. I think the reality is that it is not likely to be a significant factor, merely because the penalty has been increased.

As the member for Brampton knows, traditionally people apprehended are charged with impaired driving and with blowing over 0.85, or whatever it is, and the penalty is the same. So if a person is convicted, he or she draws the penalty. The reading charge is the standard charge that has been utilized for years.

The number of available defences have been thoroughly plumbed by the courts. Perhaps more will develop, but I think the reality is that the area of defence activity is fairly carefully defined. In my experience as a practitioner, at least, if you had a defence to that charge, you would probably advance it just as vigorously to save your client a three-month suspension as you would to save him a one-year suspension.

However, it is conceivable, and next year we will know whether there is a buildup. Unless we were certain there would be a buildup of activity it would not be prudent budgeting to build in a cushion when the money could be spent on areas of demonstrated need.

Mr. Callahan: I just raised the issue. As the Attorney General has said, it will either be considered in next year's estimates, or perhaps even a supplementary estimate.

Hon. Mr. Scott: If the member's fear becomes real, I want him to know we are not going to cave in on these cases simply because we are approaching the ceiling on the budget item. We will see to it that these cases are prosecuted.

Mr. Chairman: Members of the committee, may I ask that we rivet our attention to vote 1601 to the extent possible. I am allowing a degree of flexibility because this is a very broad category and I understand that I have two speakers lined up who wish to raise questions with the Attorney General: Ms. Gigantes and Mr. Warner. If at all possible before we conclude at one o'clock, I would like to get vote 1601 passed so we can start

moving in some kind of order through the balance of the budget. Mr O'Connor you had a point–

Mr. O'Connor: A point of order, if I may, Mr. Chairman. I thought that I was next in order on this issue.

Mr. Chairman: I am sorry, I thought we had covered your point. You were before Ms. Gigantes, you are absolutely correct. I will go to you, then Ms. Gigantes and then Mr. Warner.

Mr. O'Connor: I want to make the point in the light of the fact the Attorney General has made a significant statement in this area this morning. I want to respond to that statement with a brief one of my own and I do not want us to slide by the impaired driving situation without my having an opportunity to do that. I can advise the committee if it wishes that I do not have any more questions on 1601 and would be happy to see it put to a vote at one o'clock. I do not know about my colleagues.

Ms. Fish: Yes, we will let him off.

12:40 p.m.

Mr. O'Connor: Am I then permitted to proceed?

Mr. Chairman: Most certainly.

Mr. O'Connor: The matter has been opened. Ms. Gigantes did give a considerable statement. I wanted to compliment the Attorney General on the one very strong initiative he has taken to increase the licence suspensions to one year.

As we see the situation, the attack on drunk drivers and the attack on this problem is a two-pronged one that involves not only the suspension of licences, as has been indicated, but also the addition of greater penalties.

While the Attorney General indicated in his statement that he has issued a directive to his crown attorneys to seek higher penalties–referring to the McNeigh case, the full text of that statement to the crown attorneys was provided to me several days ago and I thank him for that–that does not go far enough. There should be a greater initiative and specificity in the directives to the crown attorneys. All he seems to say in the area of greater penalties is that he is urging them to seek a jail term in a greater percentage of cases that come before the court.

The problem that is going to arise is one which Mr. Callahan briefly alluded to and one which he will be aware of, as will Mr. Cooke and myself, having been practising lawyers in areas outside the judicial district of York. In the smaller county towns, there develops a certain degree of camaraderie and friendship between counsel and the one or two–in Mr. Callahan's case it is seven but in my case it is three or four–crown attorneys; there will be many more cases that will go to trial.

There will be many more instances of tougher plea bargaining, many more cases of defence counsel and crown counsel knowing the more severe penalties that are involved with the threat of a jail term and a longer licence suspension. There may be much more of that kind of situation going on whereby, because of the relationship between the parties, certain plea bargaining arrangements might be made that might not otherwise be made if the rules the crown attorneys were working under were more specific rather than simply the general guideline that they should seek greater penalties.

To be more particular, I am thinking of directions or guidelines whereby the crown attorneys must be required to seek a jail term in cases in which the blood alcohol is over a given limit. I am going to suggest 200, which is a very high limit. If it is very high, they will be more easily able to say to the defence counsel, with whom they are dealing: "Look that is very high. Anyone over 200 is going to be blind drunk. I simply have this directive in the Attorney General's office and I cannot do anything for you."

Another guideline might be if the evidence of the driving is particularly bad; where the police officer has observed the accused weaving all over the road, perhaps where there has been an accident, but not necessarily. As the Court of Appeal points out, it is often just merely a fortuitous situation as to whether there was an accident or not. A jail term might be a requirement if the evidence of the driving has been particularly bad or perhaps where the physical tests the accused is usually required to take have been particularly bad.

The Attorney General may be aware–my friends are–that on the standard alcohol influence report the police officers must complete when dealing with an impaired driver, they are required, at the bottom of the report, to give an opinion as to the degree to which the accused was impaired.

There are three or four categories, which involve slight, obvious and maybe one more–I am not sure. If, in their opinion, the accused is in the highest degree of impairment, that may be a signal that the crown attorney should be required to seek a jail term. In going as far as the Attorney General has with that very general directive, there will be many circumstances, perhaps too

many, where a good defence counsel will be able to negotiate his way around that.

Another area in which the Attorney General should take some initiative is with regard to the submitting of the past record of the accused. Several years ago, any record older than three years could be ignored at the crown attorney's option. He did not need to put it to the court, so the judge would not have been aware of it and need not have convicted the accused of a second offence if the record was more than three years old.

Approximately four or five years ago, our government extended that time to five years. I wonder whether it now is time for us to extend it to a greater period of time or perhaps even to eliminate the time period altogether. While I understand some severe hardships might occur by the total elimination of the time period, some consideration should be given to extending it to perhaps seven or eight years.

Because an accused now is faced with much more severe penalties, the pressure is going to be on the crown attorney from the defence counsel, who is going to work all the harder to make sure his client somehow is exempted from the time period or for some other reason is not subject to the much more severe penalties.

To go back to my original comment, if the penalties are going to mean anything there has to be more than that general directive. We have to get specific and take out of the hands of the crown attorneys some of the discretion they now have. That discretion may in certain circumstances, and perhaps too often, be exercised in favour of the accused. If we are really serious about clamping down in this area, we have to move to very severe and strict directives that cannot be circumvented by the methods defence counsels are aware of at present.

Hon. Mr. Scott: Perhaps I can make a short observation. The directive my honourable friend has referred to is only the most recent of a series of directives. There are directives that deal with informal discussions relating to penalty and directives that deal with the necessity of proving a conviction that has occurred in the last five years. On that point, we are looking at the possibility of extending that. There are certain questions about the cost of reprogramming the computers to produce that information with reasonable dispatch. That presents some significant financial problems, but we are looking at it.

The difficulty I have with what the member says is a result of his effort to frame with precision the cases in which the crown attorney should submit there will be a jail term. He suggests it should be a reading of more than 200 or a very bad case. "A very bad case" is not a guideline that is going to be much more helpful or much more precise than the direction the court itself is given or than that given by our directive to crown attorneys. To say "only ask for a jail sentence in very bad cases" is going to leave us exactly where we are.

To suggest an arbitrary figure, such as more than 200, has its own dangers because if you say to the crown attorneys, "You must ask for this penalty in cases of more than 200," they will not ask for it in appropriate cases of less than 200; they will see it as a directive that binds them.

The reality is that in any system such as this, after the directives, you have to depend to a certain extent on the discretion of the crown attorney who is on the ground and sees the facts of the case. I am not prepared to rely exclusively as a matter of policy on the discretion of the police officer as reflected in his accident report. For court purposes I much prefer the discretion of the crown attorney who is trained in these matters.

Our experience has been that the discretion of the crown attorneys is not abused and has been exercised according to the highest professional standards. There will always be cases at the margins where we will say, "If I had been there, I would have behaved differently." However, our review of them–and we do get complaints–has led me to conclude that the act of their discretionary function is discharged to a very high degree of satisfaction. In other words, if you say, "You must do it in all these cases," I think you get into an expressio unius situation in which the courts assume it is not appropriate in the other cases.

12:50 p.m.

Mr. O'Connor: Just to agree somewhat with that analysis, that is exactly what is happening with the five years. The directive to crown attorneys, I believe, is that if the record is more than five years of age, they have the option not to prove it formally before the court. As a matter of practice, I would suggest, all crown attorneys in all circumstances do not prove records of more than five years of age.

However, all I am saying is that the very general directive that the Attorney General has left with the crown attorneys is not sufficient. There should be more specificity, with suggestions along the lines I have made: that they consider a reading of over so-and-so to be one where they should, in all cases but exceptional

circumstances–perhaps phrase it in that way–seek a jail term, and so forth through the rest of the list I have mentioned.

As general as it is left now, we may be back in the same situation we have been, with the courts assuming that the extended licence suspension is enough of a penalty without now having to impose both prongs of this attack. We should really move in with the second one more than the first, because the problem raised by Ms. Gigantes of people driving while under suspension is real and is one that is perhaps going to increase because of the longer suspensions we have now, notwithstanding the pictures on the licences.

Hon. Mr. Scott: I am not at all certain what is happening in Oakville and I would be grateful for my honourable friend's observations either now or later.

I recently visited the crowns in a major metropolitan area in this province outside Toronto and we discussed the directive with respect to proving the previous conviction within five years. There was no doubt that they regarded it as a directive upon them that they were obliged to honour; indeed, the complaint of some was that there should be more discretion. But they recognized that there was almost none. In other words, they regard the directive in the very way the honourable member says they should.

Mr. O'Connor: No, you misunderstand me. I am saying that was a directive to leave them with an option. They do not consider that they have an option, exactly. The same argument applies to the 200 reading limit. I tend to agree to a certain extent, but I still think there should be more directives to the crown attorneys along the lines of the ones I mentioned.

If we leave it as general as we are doing, there will be a very great tendency to consider that the licence suspension alone is a severe enough whack and they will in many cases not ask for the jail term, which is a more important thrust that we should be taking, rather than the licence suspension.

Hon. Mr. Scott: I suspect that in the end, after today and after the Court of Appeal decision to which you have referred, no crown attorney and no law practitioner in the province will be unaware that a jail sentence in an appropriate case may be requested by a crown attorney along the lines of either the directive or the lines that have been suggested by the Court of Appeal of Ontario.

Mr. O'Connor: We should keep in mind, though, that the directive deals with a case of criminal negligence and not with one of impaired driving, although a large amount of alcohol was involved.

Hon. Mr. Scott: That distinction might work with me, but it would not work with a judge.

Ms. Fish: I hope not.

Mr. O'Connor: We are going to have to monitor it very carefully. I think you are going to find, and I hope–you refer to further statements you will be making–we will be moving in the directions I am suggesting.

Hon. Mr. Scott: I am grateful for those comments.

Mr. Chairman: We have about five minutes, so I am going to ask for brevity on the part of the remaining speakers, starting with someone who has exercised nothing but brevity so far, Ms. Gigantes.

Ms. Gigantes: How many of the people who are incarcerated on traffic offences related to drinking are there because they cannot pay fines? Do you know?

Hon. Mr. Scott: The deputy points out to me it is conceivable that those figures could be obtained from the Ministry of Correctional Services, but they are not likely to be terribly meaningful, because the power of the court to permit the payment of the fine is now so broadly utilized that it does not tell you very much.

If someone is given six months to pay the fine and he does not, you might say that is because he could not find the $200.

Ms. Gigantes: I do not know what the fines are, but if you do not have it in the bank–

Hon. Mr. Scott: Or it might simply show they are determined not to pay the fine for some other reason, or they regard a period in jail as a more economic use of their time.

On the other hand, if you found people had paid the fine within the six months, you still would not have excluded the real possibility that it was a very difficult matter for them to find the money. I think we could get that information, and will if you want it, but I am not sure it will tell you the answer to your quite appropriate question.

Ms. Gigantes: May I ask, too, a simple question about why Ontario has not chosen to sign on with the federal government so that alternative programs for alcohol treatment are used instead of incarceration in cases of people who are involved in chronic drinking?

Hon. Mr. Scott: We have some reservations about the utility of that program with respect to deterrence. It is a major question. As a matter of

principle, we do not accept that every program the federal government announces and sends down the pike is necessarily appropriate. We are prepared to review them. I would welcome a full discussion about this. We are not satisfied that program is the kind of deterrent we need.

Ms. Gigantes: The John Howard Society tells me that, with the chronic drinking-driving case, the rate of success with incarceration and a treatment program is about equivalent.

Hon. Mr. Scott: Did you say it was about equivalent?

Ms. Gigantes: Yes.

Hon. Mr. Scott: I would not know.

Ms. Gigantes: There does seem, at least in this committee–and it makes sense to me–a good deal more sympathy with the idea of offering a person treatment which may be as effective as incarceration. Possibly what you are dealing with here is a disease. People who know alcoholism often describe it as such.

Hon. Mr. Scott: Yes, I accept all that. However, I think the major function of this kind of program, apart from its educational component, which I think is critical, when you get into the court system, is to create a deterrent. I am not satisfied the announcement that they will have the opportunity to attend an alcohol abuse program for the next three months would be regarded as a deterrent by the kind of persons with whom we are dealing, in the same way the licence suspension is.

Ms. Gigantes: When you are dealing with somebody who has a disease called alcoholism, and that has a symptom, among other things, a problem with drinking and driving, one wonders whether deterrence is really effective at all. One can question that.

Hon. Mr. Scott: That is why the Minister of Transportation and Communications (Mr. Fulton) announced today that a program is being developed so that people convicted of a number of alcohol-related offences will, in effect, be presumed to be either irresponsible or the victims of an alcoholic disease and will lose the privilege of driving under terms he is going to develop and announce.

Ms. Gigantes: Is it appropriate to incarcerate somebody who may be defined as sick?

Hon. Mr. Scott: As a matter of general principle, no, but I do not understand what that deals with here. I assure you, it is not intended that those who are convicted of impaired driving who are not alcoholics will lose their licences and go to jail and those who are convicted of precisely the same offence but are alcoholics will escape that penalty. Is that what you are suggesting? Then the defence in the case Mr. Callahan and Mr. O'Connor are going to raise is that the accused is, in fact, an alcoholic and should obtain a lesser penalty.

Mr. D. R. Cooke: That is important, but that depends on how it is enacted.

1 p.m.

Ms. Gigantes: I do not know enough about what is provided for.

Hon. Mr. Scott: Mr. Cooke is telling you he does not, either.

Ms. Gigantes: I do not know whether there is a deprivation of liberty, or what would be involved in such a program. I simply do not know, but I just question whether deterrence is something one can talk about rationally if one is dealing with a group of people who essentially–

Hon. Mr. Scott: If I may say so, I am conscious of the alcoholic and the point you make which, speaking in general, is a sound one. I have no quarrel with it. But I think the deterrent here is the inflexibility of the penalty.

Ms. Gigantes: There is no way out.

Hon. Mr. Scott: When you are standing in a court of law at the dock and you are going to lose your licence, everybody thinks there is a special case for him. They all think that there is a special reason they should be allowed to drive. Let it be said that these penalties are going to be inflexible.

Mr. Chairman: I apologize to Mr. Warner. We have run out of time. I will see, sir, that you get the first opportunity to speak when we resume.

Mr. Warner: If it is of help, I had questions on this section. If the rest of the committee is prepared to carry vote 1601, I would be prepared to forgo my questions.

Mr. Chairman: Because this section is so general there probably will be a lot of room to bring those questions up later in the specific areas of the budget. I do not think they are covered entirely on this page.

Vote 1601 agreed to.

Mr. Chairman: How much time is remaining?

Clerk of the Committee: There are 11 hours and seven minutes.

Mr. Chairman: We have a lot of time.

Mr. O'Connor: Before we adjourn, may I ask a question with respect to the four hours? We

have to figure that one out, two hours on native rights and two hours on women's rights.

Ms. Fish: That is not included in the original 16. Why are you shaking your head? Are you saying it is included?

Mr. Chairman: No, they are not included.

Mr. O'Connor: They are not to be included in the 16 hours?

Interjections.

Ms. Fish: Ms. Gigantes, sorry, we are dealing with the length of the estimates and the questions surrounding the existing allocation on native affairs and women's rights.

Ms. Gigantes: I have a car to catch. We can have a 20-minute discussion about that.

Ms. Fish: I want it on the record that it is the clear understanding in our party that the estimates are 16 hours for the Attorney General, plus two for native affairs, plus two for women, for a total of 20 hours.

Mr. O'Connor: The Attorney General is nodding consent, I note.

Mr. Chairman: May we get clarification from the House leaders on that? They have allocated the hours. We are talking about 16, plus two and two for the other two sections.

Hon. Mr. Scott: I thought it was 16 including the other two sections.

Mr. Chairman: I do not believe it is. I clearly recall the other two sections as being separate and that both women's issues and the native rights area would be separate. We will get clarification from the House leaders. The allocation of time is determined by the House leaders.

Hon. Mr. Scott: Are not the estimates of the Ministry of Consumer and Commercial Relations coming up? That will be much more interesting. That is where you want to put in your time.

Mr. Chairman: We have only 20 hours for that ministry.

Ms. Fish: The importance of the matters under the attention of the Attorney General merit a careful and full examination and discussion.

The committee adjourned at 1:05 p.m.

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No. J-4

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Legislative Assembly of Ontario

Standing Committee on Administration of Justice
Estimates, Ministry of the Attorney General

First Session, 33rd Parliament
Wednesday, January 8, 1986

Speaker: Honourable H. A. Edighoffer
Clerk: R. G. Lewis, QC

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, January 8, 1986

The committee met at 10:08 a.m. in room 151.

ESTIMATES, MINISTRY OF THE ATTORNEY GENERAL
(continued)

Mr. Chairman: Members of the committee, I believe we have a quorum and representatives from all the parties here, so we can get under way.

I have a couple of brief comments to make to bring you up to date on where we are. We were allocated 12 hours for the estimates of the Ministry of the Attorney General, as well as two hours each for women's issues and native affairs, for a total of 16 hours. If you want to write this down, there are seven hours and six minutes left of the Ministry of the Attorney General's estimates and two hours each in the other two areas of concern; so the number of hours we have left is 11 hours and six minutes.

I want to raise with the committee the question of the handling of the balance of this time. Effectively, you have seven hours and six minutes left for these estimates. We have completed vote 1601 and we are now at the point of either discussing further or calling for agreement on vote 1602. If you have any questions with respect to how we are proceeding, you can raise them now before we get started.

Mr. O'Connor: On a point of order, Mr. Chairman: I have raised this point before with respect to the allocation of time. From the outset my understanding, and that of my colleague Ms. Fish—who will be here at 11 o'clock, according to a note I have just received—has been that the estimates of the Ministry of the Attorney General were to be the full 16 hours and that in addition to the 16 hours there were to be two hours for native rights and two hours for women's issues.

I know we have discussed this before and it was the chairman's understanding and perhaps the clerk's understanding that this was not the case. However, I thought during the recess there was to be some communication among the House leaders to determine whether that was the correct allocation or whether there would be a clarification of this.

I do not want it to pass, your having said it just now, as being accepted by the members of our party on that issue. We still understand that there are to be four additional hours to the 16 originally set out.

Mr. Chairman: For purposes of accuracy, I want to read to you the memo I have been given from our committee clerk:

"I was informed by the government House leader's office that at the House leaders' meeting of October 24, 1985, it was decided that the estimates of the Ministry of the Attorney General be given 12 hours and two hours each for women's issues and Indian affairs, for a total of 16 hours."

I take it from this memo and from the information I have that the respective House leaders from all parties have reached agreement on that. If that is not the case, it is not within our area of responsibility to change it here. In fact, we would have to go back to the House leaders for an extension of the time to incorporate the thoughts Mr. O'Connor has put forward; but that is not what I have at the moment, and it is not what the Attorney General (Mr. Scott) understands it to be.

Mr. O'Connor: That memo is dated October 24. We have discussed it since then, I believe, at least once and maybe twice. As late as the second-last meeting before we rose before Christmas there was some discussion of this issue, and I had understood the House leaders were going to rediscuss this whole matter and perhaps realign the time. Perhaps we could get some thoughts from our colleagues in the New Democratic Party.

Mr. Chairman: May I clarify something for you? One point you just commented on is not entirely correct, and I know you would want to be entirely correct in whatever comments you make.

The meeting I referred to on October 24 was when the matter was discussed. The information I have received from the House leader's office was received by our clerk within the past week; so it is accurate and up to date. The meeting was held at that time, and if they have had any further discussion, I am not aware of it.

Mr. O'Connor: No, I am not saying they have. I am saying that we as a committee have discussed it among ourselves since October 24 with a view to clarifying whether more time

could be obtained for the other two responsibilities of this very busy minister.

Mr. Chairman: All right; I will go to Ms. Gigantes in a moment. I do not want to waste too much time this morning, because the clock is running. However, the fact is that if we are dissatisfied with what has been allocated in terms of hours, it has to be negotiated with the respective House leaders and they have to hammer it out. I will go back with whatever position this committee determines is fair, equitable and proper.

Ms. Gigantes: Mr. Chairman, I hope when you say "the clock is running" you do not mean it is running on our precious estimates time.

Mr. Chairman: It is.

Mr. Warner: It should not be.

Ms. Gigantes: No, it should not be. This is a procedural discussion and has nothing to do with the discussion of the estimates of the Attorney General or anybody else's estimates; so I hope we can propose to you that you subtract this procedural discussion time from our estimates time.

It probably would serve us all well if we checked with our House leaders and finally determined what the agreement was. My original recollection was fuzzy. I think I agreed with Ms. Fish when she first suggested it was a total of 20. I went back and checked and my understanding is that it was 16 that was originally agreed to.

I would like to make a proposal concerning the division of time within that 16 hours, and I have a second matter I would like to raise after that.

Mr. Chairman: Ms. Gigantes moves that the committee add an hour to the discussion of women's issues within the 16-hour block and subtract an hour from the Attorney General's estimates per se.

Ms. Gigantes: Many of the matters we are dealing with within the Ministry of the Attorney General and in justice generally have to do with women at this time, and there is an awful lot of information we would like to be able to discuss with the minister in his responsibility as minister for women's issues. If that is acceptable to the committee, I will be very pleased.

Mr. Chairman: If that motion carries, it will not be etched in concrete until the House leaders agree. We cannot make an adjustment, even to the arrangement for 12 hours, two hours and two hours, until the House leaders have agreed. If it is your wish to delete an hour from the estimates of the Ministry of the Attorney General and add it to women's issues, then that is the motion proposed. Mr. Cooke wants to speak; maybe he will speak to the motion.

Mr. D. R. Cooke: I presume the seven hours and six minutes you informed us of now is down to less than that. I think the clock should be running during the course of this procedural debate because we have invited the Attorney General here and all kinds of staff are sitting here waiting to be questioned.

Mr. Chairman: In fairness, I believe the chair has the prerogative to rule on this. I am going to rule that the discussion should not be counted as part of the hours and that the approximately 10 minutes we have spent on this should not count. Therefore, if you want to discuss this, the clock is not running.

Hon. Mr. Scott: That will not speed things up.

Mr. Chairman: I realize that. Would you like to vote on the motion so we can get the clock started and get moving?

Mr. Warner: I call for a recorded vote to see who is against women's issues.

The committee divided on Ms. Gigantes's motion, which was negatived on the following vote:

Ayes

Gigantes, Knight, Warner.

Nays

Cooke, D. R., O'Connor, Partington, Polsinelli, Villeneuve.

Ayes 3; nays 5.

Ms. Gigantes: I would like to raise another matter, the request we have all heard from the Attorney General that the hours of sitting of this committee be rescheduled.

A proposal was made that we change our hours from Wednesday morning to Wednesday afternoon and from Thursday afternoon to Thursday morning, leaving Friday intact. That presents some difficulties for us. My colleague Mr. Warner sits on the standing committee on procedural affairs, which sits on Thursday morning. We would find that difficult.

We would be quite prepared to consider rescheduling the time of sitting of this committee. I would like to suggest that we look for a way to get rid of the one hour and a half on Friday. By the time we get going on Friday it becomes an hour and a quarter. For those of us who have to make connections out of Lester B. Pearson International Airport, late afternoon flying on Friday is a misery.

David Warner and I discussed this informally this morning. If it is acceptable to committee members, I am going to propose that the committee propose to the House leaders that we sit on Wednesday afternoons from 1 p.m. until 5 p.m., for a four-hour session, and that we either stay with the current Thursday afternoon sitting or try to change it to Tuesday.

I do not know how that would fit with other people's committee schedules. We would make up our seven hours of weekly sittings on Tuesday, Wednesday and Thursday, rather than having Friday. We are quite happy to let Thursday go if we can accommodate the other three hours we are looking for on Tuesday.

Mr. Chairman: One of the complications we have had is working around the time that is available to the Attorney General. We have been trying to accommodate his very difficult schedule at the same time as accommodating the schedules we all have to face on a weekly basis. Does the Attorney General wish to comment on that?

Hon. Mr. Scott: I have no objection to that. I will try to accommodate myself to the committee's timetable. I would be unhappy at losing the Friday morning. I would be happy to do that, in addition to the Tuesday proposal, to get this work done.

10:20 a.m.

Mr. Warner: Is Wednesday afternoon better than Wednesday morning?

Hon. Mr. Scott: Yes.

Ms. Gigantes: Is 1 p.m. to 5 p.m. on Wednesday acceptable to people? That would give us four hours.

Mr. O'Connor: Wednesday morning is better for me personally. I try to get back to the riding on Wednesday afternoons. Although you are not able to, I am, and I find it very convenient.

Hon. Mr. Scott: The problem is that cabinet sits on Wednesday morning.

Mr. O'Connor: That is fine. We would rather have you here.

Hon. Mr. Scott: I am forgetting what they look like.

Mr. O'Connor: I would agree with my colleague with respect to Friday. I sympathize with him.

Ms. Gigantes: How is Tuesday afternoon for most of the committee?

Mr. Warner: Is Tuesday afternoon better than Thursday afternoon?

Ms. Gigantes: Mr. O'Connor, do you know about Ms. Fish's schedule?

Mr. O'Connor: No. She will be here at 11 o'clock.

Ms. Gigantes: Perhaps we should leave it until she gets here, Mr. Chairman.

Mr. Chairman: I would like to get this over with so we can get the clock started.

Mr. Knight: I think the Wednesday morning and Wednesday afternoon problem is something on which we can agree we should look at in changing the committee schedule. If we can accommodate the Attorney General in that respect, we should try to do so.

Concerning whether we continue with Thursday or Tuesday, I do not know what all the rest of the committee members have as far as other committee duties are concerned. Those may change, as some changes are coming in committees and committee memberships. We may have to leave to the discretion of the House leaders whether they can schedule us on Tuesday as opposed to Thursday.

However, perhaps at least we can have an agreement to approach our House leaders with respect to changing to Wednesday afternoon.

Mr. Warner: If we were to sit Tuesday afternoon and Wednesday afternoon, it would give us about the same amount of time as we are getting now from three sittings. In terms of members' individual schedules, it at least frees you up completely for Friday. Then if we do require additional sittings once we have got through the estimates and are looking at legislation, we still have the option of evening sittings, as any committees do if they run into problems.

Mr. Chairman: What is the committee's wish? Do we want to go back to the House leaders and see whether we can get the times adjusted to fall in line with the suggestion made by Ms. Gigantes? Mr. O'Connor indicated some concern about it. Can you make this sacrifice for a few weeks to get through this, in terms of Wednesday afternoon in particular?

Mr. O'Connor: Yes, Mr. Chairman.

Mr. Chairman: Is it understood? Do we have to have this in the form of a motion?

Clerk of the Committee: It would help.

Mr. Chairman: All right.

Ms. Gigantes moves that the committee schedule be altered to 1 p.m. to 5 p.m. on Wednesday and that the committee sit after routine proceedings on Tuesday.

Ms. Gigantes: If we make a special effort to clear up all these procedural matters before we get to full committee, and if we get to committee on time, we will probably do better in terms of time than by starting a new clause every three days.

Mr. Chairman: Okay. I am going to call the vote.

Mr. Polsinelli: Mr. Chairman, is it our understanding that this is a temporary arrangement?

Mr. Chairman: Yes, for the duration of the period to get through the Ministry of the Attorney General's estimates. That may accommodate the Attorney General somewhat more comfortably as well.

Mr. Partington: Is deleting the Friday sitting a part of the motion?

Mr. Chairman: Yes; so ostensibly you will be able to get back to your ridings somewhat earlier on Friday, which may accommodate the loss of the Wednesday time.

Motion agreed to.

Hon. Mr. Scott: May I make two comments? The first is that I cannot be here tomorrow afternoon, because there is a meeting of the policy and priorities board of cabinet which I have to attend. Because the cabinet will be sitting in Timmins next Wednesday there is going to be a problem, but I will find out the details of that and let you know. However, if you want, I am quite prepared to carry on with the deputy, who can be here. You can perhaps get all the information you want from him and then roast me when I come back on the basis of what he said. However, that is up to the committee.

The second thing is that Bill 7 hearings are going to be dealt with by this committee. You may want to fix a timetable for that at some time because you may want to advertise those hearings in the light of the fact that subsection 19(2) of the Ontario Human Rights Code will be considered.

Mr. Chairman: I am informed by the clerk that 30 individuals and groups and organizations have already indicated an interest in appearing before us in connection with that.

Hon. Mr. Scott: They must be interested in the change from "British subject" to "Canadian citizen."

Clerk of the Committee: No.

Ms. Gigantes: Would it be reasonable to ask the clerk to make a proposal that we could deal with at our next meeting? I would be quite happy to consider a proposal.

Clerk of the Committee: What is this?

Mr. Chairman: A proposal from you for our next meeting.

Ms. Gigantes: We cannot seem to get our subcommittee, our steering committee or whatever it is called, in gear.

Mr. Polsinelli: Mr. Chairman, there is one more procedural matter I would like to bring to your attention. I note that Bill 1 has been completed by this committee and returned to the Legislature. I understand there was some type of a tradition the Attorney General apprised us of during those deliberations. I was wondering whether arrangements had been made to fulfil that tradition.

Mr. Chairman: There was nothing specific, although the matter has been discussed on a rather frequent basis. I do not know whether the Attorney General wants to comment on that now. How does he feel about making some comments relative to the old traditions of this grand establishment?

Hon. Mr. Scott: I would be delighted to take the committee to dinner at any time. It has only to select the time. I thought we might want to defer that until after the estimates are out of the way to see precisely whom the guest list will include.

Mr. Polsinelli: Maybe we will want to complete deliberations on Bill 7 too.

Hon. Mr. Scott: If the chairman will pick the time, I will be glad to make the arrangements.

Mr. Sterling: May we pick the place?

Hon. Mr. Scott: You may make recommendations about the place to me. I am glad to have them.

Mr. Chairman: I am sure I can find some appropriate spot.

Hon. Mr. Scott: The Conservatives always dine at the same place on Bay Street anyway, so I know what they are going to recommend.

Mr. Chairman: Totally untrue. Is there a McDonald's on Bay Street?

Hon. Mr. Scott: There is now, you will be glad to hear.

Mr. Villeneuve: The 99-cent, tax-free lunch.

Mr. Chairman: Thank you for bringing that matter up, Mr. Polsinelli. I appreciate that.

On vote 1602, administrative services program; item 1, main office:

Mr. Chairman: We will now get started with vote 1602 and the clock will start as well. As I indicated, we have discussed vote 1602. Unless

there are any other comments, I would like to call a vote on this relatively soon.

Ms. Gigantes: Mr. Chairman, vote 1602 is a very heavy item and I hope you will bear with us.

We had not discussed item 1.2 in vote 1602, and I do not think we had completed our discussion of legal aid clinics. As I recall our last session, my colleague the member for Scarborough-Ellesmere (Mr. Warner) was involved in a lengthy discussion with the Attorney General concerning clinics. I have one matter concerning clinics I would like to raise with the Attorney General. I would also like to be able to ask some questions about item 1.2.

I would like to ask the Attorney General about the setup of legal clinics with respect to what happens when something goes wrong in a legal clinic. He will be familiar with a situation that has developed in Ottawa where there is a great deal of controversy about an old board leaving and a new board coming in. I understand there is to be a meeting this month that is supposed to redefine the situation.

What is the structure under which the clinics operate? Does each have its own constitution and its own procedures for determining what is a fair election to the board and such matters?

10:30 a.m.

Hon. Mr. Scott: Any detail you want on that subject can be provided by Mr. Ewart, who is here. The reality, as I understand it, is that each clinic establishes its own constitution and makes whatever bylaws or administrative requirements that are desirable for its own operation. There is nothing to prevent a clinic from being established entirely independent of the Law Society of Upper Canada, providing it meets the normal rules respecting the provision of legal services to the public that are fixed by the society.

The interest of the Attorney General's department comes into play when the clinic in existence asks for funding for its operation. That is dealt with by the clinic funding committee, a committee of the Law Society of Upper Canada. The interest of the law society with its clinic funding committee reflects its concern to grant funding for the provision of appropriate services.

Ms. Gigantes: But that interest is, in the end, the overriding interest.

Hon. Mr. Scott: Yes.

Ms. Gigantes: They can operate without that approval.

Hon. Mr. Scott: There is nothing that prevents a clinic from operating and providing its own funding, assuming it operates consistently with law society rules.

Ms. Gigantes: But that is for the provision of services to the public.

Hon. Mr. Scott: Precisely. If it wants to be funded by the legal aid plan, it makes application. It notifies the clinic funding committee of the geographic area in which it proposes to provide the service, the way it proposes to provide it and the guidelines it has adopted. Then it makes a budgetary request which is granted, modified or rejected.

Mr. O'Connor: I have a question but it is not on clinics. I want to move on to another subject.

Mr. Chairman: I believe Mr. Warner has a question on clinics.

Mr. Warner: Yes. Where we left off before, it appears, on reflection, that we have reached an impasse. There is not much point in my pursuing it. The Attorney General has a different view of how the clinic should maintain its autonomy to the one I have; so we will drop that.

A very interesting speech was reported in the newsletter of November/December, where the Attorney General was speaking to the clinics and received justifiable praise for his interest and support of the clinics. This is only a summary, so there are probably things left out.

I wonder whether the Attorney General has a plan for expansion of the clinics. His speech did not mention whether he has a plan for numbers, regions or specific types of clinics, such as aid to the disabled or elderly or any other groups. Does he have any plan for expansion over the next 12 months in any or all those areas I have mentioned and does he have any dollar figures?

Hon. Mr. Scott: It would not be accurate to say I have a plan in the sense of a personal agenda for the expansion of clinics. It would be accurate, however, to say I am committed, finances permitting, to the expansion of clinics. There are 52 in existence now. It does not require a very astute observer to see there are areas where service is not being provided or is not being provided as fully as one would wish. There is room for more clinics if finances permit.

My view, however, is that the community should take the initiative in the provision of the clinic. The community, with the assistance of its leaders, is the best judge of the kind of clinic it wants and the kind of service it would find useful. The initiative, therefore, should come from the community. There is a community that thinks there should be a clinic to assist landlords, as Mr. Warner knows, and that community got

together and made an application. There are other communities across the province that feel legal advice is required for tenants and they get together, organize themselves, develop a structure, a delivery model, and then apply for funding. I hope that will be the pattern.

As you know, there will be some areas in the province, usually more remote areas, where community structures are not sufficiently highly developed to permit even that kind of initiative. That is particularly true, in my own experience, in native communities in the province, where a little more aggressive initiative has to be taken by the central agency to get the thing started.

The upshot is that it is my desire to expand the clinic system, which I think has been a model and can provide very useful service to poorer people in the province, but I hope the initiative and choices that are going to be made will be made by the community and the clinic funding system itself.

Mr. Warner: I appreciate that. I think it is the right approach, provided the Attorney General can target some kind of goal in dollars which he would like to see added to his budget process so the planning done by the community can be realized. If there are not the dollars, then there is not much point in doing the plan.

Hon. Mr. Scott: Two things happen in reality. In process one, the communities out there in Ontario presumably band together, establish the need and make their applications to the clinic funding committee.

In process two, now under way, the clinic funding committee reviews the needs that come forward and prepares an estimate of the needs, which it recommends to a convocation of the Law Society of Upper Canada and which tells us its basic view of how many clinics should be established in the next succeeding year.

Having made that recommendation, because it is the law society's plan, they come to the Attorney General and ask, "Can you make funds available sufficient to permit the establishment of these services?"

Mr. Warner: That is where you have to fight in cabinet for the dollars.

Hon. Mr. Scott: Yes.

Mr. Warner: Quite candidly, to his credit, when Mr. McMurtry was Attorney General, he certainly fought for dollars for the communities.

Hon. Mr. Scott: And very successfully.

Mr. Warner: During years when there were severe budget cuts in many departments, he was able to hold the line; so you have a role to play in at least maintaining that and we hope going beyond it. That will not be easy, given budgetary restraints, but it takes a fight in cabinet and we hope you are up to that task. You will certainly have the support of a lot of people, not just here but in the community.

Hon. Mr. Scott: The fight is going on at this very moment when I respond to your questions, Mr. Warner. I am sorry I cannot be present.

Mr. Warner: We can look forward to having a second clinic in Scarborough then, I take it.

Hon. Mr. Scott: I do not regard it as my function to plunk down a clinic here or a clinic there to please individual members of the Legislature. I think the members of the Scarborough community will tell us if they want another clinic. From what you have told me before, I gather they do. They will then make their application to the clinic funding committee, which will try to determine the global needs and the needs that are manageable for expansion in one year.

10:40 a.m.

I know something of the Scarborough problem. I was being facetious when I referred earlier to your interest. It is a growing municipality, but on the other hand, there are areas in the north and in rural parts of the province where there are unmet needs as well.

Mr. D. R. Cooke: Some thoughts are coming back to me about a time when I was a member of the board of directors of a community legal clinic. This is going back a few years. At that time we had serious problems in dealing with the extensive bureaucracy from Queen's Park, to the point where our director was spending most of her time satisfying demands from Queen's Park. Eventually we threw up our hands and a new board of directors came in. I am just throwing that out. Is it a problem generally?

Hon. Mr. Scott: First of all, the bureaucracy you were dealing with was not the bureaucracy of Queen's Park, I suspect. It was the bureaucracy of the law society which runs the plan. We must remember that at present, while this plan is funded by government, it is run by the law society. That is done to ensure the independence of the provision of the legal services. So the bureaucracy that clinics deal with is a bureaucracy–and I no longer regard that term as pejorative–

Mr. Chairman: When did this change occur?

Hon. Mr. Scott: About six months ago. That bureaucracy is the establishment the law society has created in order to run its own independent

plan. We fund it but they deal with it. There are natural tensions that occur in that funding process because there is a very severe financial limitation on this service, as there is on any other.

We have tried to make plain that the criticial service choices a clinic makes, whether they will be landlord and tenant clinics, whether they will be clinics for the disabled and so on, should be decisions made in the community by the community board. They should decide what they want to do and, within the professional limits that have to be established, how they want to do it.

The clinic funding committee's function is to provide the funds. Of course, in providing the funds, they have to maintain some measure of quality or standard control. As you can imagine, in any organization–not only clinics, but also any organization that comes to government for money–that leads to a natural tension.

Mr. D. R. Cooke: I have a second part to my question. Last spring I was at the annual meeting of the successor community clinic in our community. I believe the figure I recall was that the average cost per client was about $15. I doubt any law office in the province could equal that. If that is an accurate figure, I compliment the ministry and the law society.

Hon. Mr. Scott: I accept from you that the figure is accurate. I do not think any of us will fail to recognize that the level of service is very high and that it is produced for a relatively low dollar expenditure. The bureaucrats use the expression "cost-effective." That is another phrase I am getting used to, because everything we do is cost-effective.

I want to add one observation so that I do not mislead Mr. Warner or Mr. Cooke. I wanted to emphasize, and I did, the fact that it is the community that presents the request for a clinic and chooses the service or territory it seeks to serve. Then it applies for funding to the clinic funding committee. As you can imagine, the clinic funding committee is confronted with more applications annually than it can possibly fund.

The funding committee has to make a selection among the requests that are before it in any one year. If they can afford only six new ones and there are 18 applications, they do not take the first six applications that come in, nor they do not take them in alphabetical order. They have to make a selection that reflects their judgement about the needs for service, such as whether the clinics should be in northern Ontario, or in urban municipalities, or landlord and tenant or what.

The Law Society of Upper Canada, to its credit–and credit must be given–has been very effective in dealing with the insertion of clinics in communities where there was a natural and early resistance to them. I have to say candidly that I look forward to the expansion of clinics in the future. The role of the law society is very useful in making it easier for a clinic to open in terrain where it is not initially well received.

Mr. Warner: Did it help the clinics?

Hon. Mr. Scott: I can give you many examples of where it has helped.

Mr. Warner: Okay; thank you.

Mr. Sterling: Does the Attorney General support legal aid clinics taking political action or acting in a political role?

Hon. Mr. Scott: The answer depends on what you mean by that. The superficial answer would be no, I do not think it is a function of clinics to perform a political role in the sense that, while I would be grateful for their support, I do not think they should come out and campaign for me or you, or against you or me. I do not think clinics have a role in that kind of direct political activity.

On the other hand, I think clinics have a legitimate role in lobbying the Legislature for reforms to landlord and tenant legislation, even though that may have a political complexion. They have the same kind of role to play as lawyers in private practice whose clientele seek legislative assistance.

Mr. Sterling: You would support, for instance, a legal aid clinic taking up the rights of property owners in protecting their property for environmental reasons.

Mr. Warner: We have an environmental law.

Hon. Mr. Scott: Yes. In provision of service, I do not regard clinics as being much different from lawyers. The modality is different, but what they do should be the same. Clinics have clientele and they should be able to meet the normal legal expectations of that clientele. If that involves lobbying for more effective environmental controls or approaching a municipal council to deal with an environmental hazard that is threatened in the community, in the 20th century that is a legal role and one that–

Mr. Sterling: Representing a group of property owners in front of the Ontario Municipal Board.

Hon. Mr. Scott: It would depend on the case. As a matter of principle, I do not see any difficulty with it. There is always the question of eligibility. I do not think it is the function of a

clinic to take on legal roles for well-to-do clients that can be performed in the normal marketplace.

Mr. Sterling: How do you define "well-to-do"?

Hon. Mr. Scott: I do not define it. I simply state that the existence of clinics is designed to provide legal services for people who could not normally afford them. Legal clinics are not designed to provide legal services for everybody in Ontario. They are not designed to provide services, generally speaking, for the well-to-do or for those who can afford to buy them.

10:50 a.m.

Mr. Sterling: What kind of means test would you suggest to a legal aid clinic, put forward in terms of a group representation?

Hon. Mr. Scott: The law society, which runs the plan, has established eligibility requirements. They are very complicated. They are under review and I think it is true that the clinics are given some measure of flexibility in responding to those eligibility requirements.

Mr. Sterling: That is perhaps true of representation in a specific case, but it does not necessarily refer to the time a legal aid clinic would spend on advising a group of property owners, etc., on a matter, does it?

Hon. Mr. Scott: I am not sure I understand the question. I have a feeling we are talking about something abstract when behind this may be a practical problem I can help with.

Mr. Sterling: No. I am talking about where you draw the line with respect to the activity of the clinic, where it distinguishes between providing a single client with a single service or a number of services to a single client, from representing a group that wants either political or legal action to take place on its behalf. It is difficult to determine the need once you go from one to 50.

Hon. Mr. Scott: Before I can help you draw the line I would really have to see the map on which the line is going to be drawn. However, the funding committee has eligibility criteria, of which the clinics are aware. There are always tensions, but I think the funding committee has been fairly flexible in allowing the clinics to respond to those criteria.

Ms. Gigantes: Mr. Chairman, it seems to me that we are really dealing with vote 1602, item 1.4, and I will mention again that I want to have a brief discussion of item 1.2.

On item 1.4, if we turn to page 30, it is hard to deal with cases such as this one now, because essentially we are dealing with funds expended. All we are doing is saying, "You did a nice job of expending them." This is 1984-85 we are looking at, not 1985-86.

Hon. Mr. Scott: Thank you for that.

Ms. Gigantes: You are welcome.

When I look at the bottom item, the federal contribution to the Ontario legal aid plan, I notice that from 1983 to 1984 we had an increase from $17.721 million to $25.960 million, which amounts to an increase of 47 per cent during the period of a year, if my calculator worked properly, in the federal contribution to the legal aid plan. At the same time, when I look at the accounts just above that bottom account, the totals expended from and within the province, we see an increase from 1983 to 1984 of about seven per cent.

Can somebody tell me how the feds make their contribution? Why was the increase in the federal contribution so high in that period, and why, if the federal contribution was increasing at such a dramatic rate, was the provincial contribution from all sources increasing at seven per cent?

Hon. Mr. Scott: It may be that Mr. Ewart can provide the detailed response, but the first thing to observe is that, as you probably know, the federal contribution is based on a formula it has developed with the provinces that provide legal aid plans, and the formula leads to a calculation based on what is called the base component.

Ms. Gigantes: That is what I seek to understand. Perhaps you can explain it.

Hon. Mr. Scott: Let me explain how the formula has been developed, and Mr. Ewart or Mr. Peebles will be able to tell you precisely how the formula works. The point I want to make is that originally the capacity to get a federal contribution was, as I understand it, based on the proposition that the legal aid plan provide services in criminal law, which is primarily an area of federal responsibility.

In order to get a federal contribution to the operation of a plan like this, we had to get some hook that would justify and compel the federal government to make a contribution. The hook was that we were providing services in the criminal code sector. They were responsible for the legislation, so they should enrich our plan.

Ms. Gigantes: The expenditures under the criminal legal aid plan section, if you look under disbursements paid, criminal, between 1983-84 and 1984-85, the dollar expenditures under the criminal division went down, so why would the federal contribution go up?

Hon. Mr. Scott: I had not quite finished my answer.

After we had made headway to get a criminal contribution, not content to stop there, we said: "Look, the federal government plays a major role in creating a good deal of civil litigation. The Divorce Act is federal law. There is a federal Human Rights Code. There is a wide variety of federal legislation on the civil side for which we provide legal aid services, so you should begin to make a contribution on the civil side."

We are telling them the Charter of Rights has forced the expansion of our plan. At every stage, we are pressing them to increase their contribution, so, as you note, even though the volume of criminal work has gone down, the contributions in total have increased because we have persuaded them, and the task is not by any means completed, that they should make a more significant contribution than they have heretofore done.

Ms. Gigantes: I still find it difficult to reconcile what you are saying with those fees and disbursements paid. If you take a close look at them, you will see that the number of cases under both criminal and civil has gone down. The costs in civil have gone up, not significantly in terms of the overall budget for this item, but the contribution the feds have been making has quite dramatically increased. Did they, in that period, get involved in clinics?

Hon. Mr. Scott: I think that was the first year they made a civil contribution.

Ms. Gigantes: I see.

Hon. Mr. Scott: By the way, I hope their contribution in the future will continue to increase. It is part of our job to persuade them of the reality that their legislative enactments expand the service of our plan and expand the necessity for our plan and they should be making even larger contributions.

Ms. Gigantes: Good. I wish you well in that.

Hon. Mr. Scott: Thank you.

Ms. Gigantes: I do not know if other people have other questions on this.

Mr. O'Connor: We have a lot of questions.

Ms. Gigantes: On this item? Because I have another item under this vote I would like to look at.

Mr. O'Connor: I would like to make some comments and ask some questions on the legal aid plan in general. I assume we are still on that.

The Acting Chairman (Mr. Partington): Go ahead.

Mr. O'Connor: The Attorney General will recall that at the outset of the estimates hearings I made some general comments with regard to a number of subjects, one of which was the whole question of funding of the legal aid plan in general.

To recapitulate briefly, it was recognized throughout the legal profession, and perhaps throughout Ontario, that the plan was woefully underfunded and that the amount of money that was being paid to lawyers for their contribution to the plan was totally inadequate and needed revamping. I pointed out the example in Oakville, where there are now only six of approximately 50 lawyers practising in Oakville who will take any legal aid work whatsoever because of the low level of payment.

11 a.m.

As a result, there was a study done in which increases of a major magnitude, which were frankly impractical, were recommended and quite properly rejected by the Attorney General who, in turn, made an offer to the law society of immediate increases of a different nature. Although it was first reported that this offer he had made was non-negotiable, he later corrected that and indicated it was not what he had said, or was not correct or was not his intention. As I understand it, the offer made for funding was an immediate increase of 20 per cent of the fees paid as of January 1, 1986.

Hon. Mr. Scott: It was December 1.

Mr. O'Connor: Prior to that was the elimination of the 25 per cent contribution lawyers traditionally have made to each file by a deduction from their fees. The last element of the offer was that each lawyer in the province would annually contribute $470 cash payment to assist the fund.

As I indicated then, I have considerable difficulty with the cash contribution by all lawyers in the province. While I recognize there may have been some rationale for requiring each lawyer involved in the plan to contribute 25 per cent of his fee in that he was benefiting from the plan, I am at a loss to understand how we can justify asking a particular segment or group in society, be it lawyers or others, to make a cash contribution to fund a government program that benefits all the people of Ontario.

When lawyers benefited from the plan, the rationale was there, although I do not think it was all that strong. However, I think it is unjustified and unfair to extend it to every lawyer, whether he is involved in the plan or whether he ever has any intention of being involved in the plan.

I suggest it is also unprecedented. We do not ask the medical profession to subsidize the Ontario health insurance plan directly. We do not ask the pharmacists to subsidize the Ontario drug benefit plan directly. We do not ask social workers to subsidize directly the mother's allowance program. I do not know of any other area where we ask a particular segment of society to subsidize directly a government program that potentially benefits all the people of Ontario.

Having made that general statement, my question is more practical. Exactly where are the negotiations right now? Where do the offers of either party stand? Are any meetings contemplated in the future? I have a final request for the Attorney General to provide us with whatever exchange of documentation has occurred between him and the law society so we can be quite clear as to the position of each side at present.

Hon. Mr. Scott: If I answer the question, you are not to assume I accept any of the preamble to it. The proposal was not unjust, unfair or unprecedented. I will not bore the committee with the whole history, but the reality is that this is not a government plan although it is paid for by government. However, it is not a government plan like mother's allowance or OHIP. It is a law society plan where the guidelines are established by the law society and which is run by the law society.

When the plan was developed, the profession in Ontario regarded that as an important value. They did not want a government plan. They wanted their own plan, run by themselves under government auspices and with government funds. They wanted to run it themselves so they could participate in the decisions having to do with the manner in which legal services were provided.

That distinguishes them from doctors and a whole host of other government plans. They wanted to do that, not simply out of a desire to manage something, because government could have managed it, but because they regarded it as central to the independence of the bar. They feared that a government-operated plan would endanger their independence and their capacity to give advice to clients to take on government.

From the beginning, when Mr. Justice Martin and Mr. Justice Arnup established the plan, it was central to it that they knew that if all the money was contributed by government, it would not be long before government would run the plan. From the very beginning, they said, "We will make a 25 per cent contribution to the plan." That is built right into the statute. They wanted it that way because it ensures their independence and their right to say, "We should be allowed to run this."

What happened was that for many years no significant increase was made to the tariff at all and it approached a scandal, as I am sure Mr. O'Connor, now in opposition, would recognize. Indeed, he has recognized that no increase was made for many years. We were confronted by that reality and by the fact that many lawyers were simply incapable of providing the services at the tariff that had existed previously.

Mr. O'Connor is right that we could not grant in one year, or even in three years, the kind of increase that was recommended by the fact-finder. What we did was to say we would give an immediate increase of 20 per cent. That would not require a statutory change; it could be done by order in council. We would sit down to discuss with the profession how its contribution of 25 per cent was going to be made in the future.

I frankly thought it was very unfair that this contribution should be made only by those who did the work. I hoped it could be made by those in the profession who shared in the tradition of the plan and who were proud of it but who, for one reason or another, had no opportunity or desire to do legal aid work. That was the proposal: how can we translate this 25 per cent into a contribution by the bar as a whole.

The whole matter is negotiable. I am delighted the law society is prepared to sit down and discuss it. It has a committee that is at work on a proposal. I understand I will hear from that committee the details of its proposal towards the end of this month or early next month.

I am also delighted the county and district law association presidents have indicated they are prepared to discuss the translation of their contribution. That is a significant and very helpful and useful turn of events. The Criminal Lawyers' Association has also indicated its willingness to discuss this issue.

All I can tell you with respect to time is that the ball is now in their court. They tell me they will be able to make some kind of proposal towards the end of this month or early next month. Then we will meet with them and see what can be done.

Mr. O'Connor: You know quite well from the previous communications that all the groups you have mentioned that are prepared to negotiate with you are unequivocally opposed to the $470 general contribution. Your insisting on that contribution and initially indicating that this offer was non-negotiable, whether or not it was

correctly interpreted, puts you in the position of going beyond the initial intent of the plan; that is, to leave independence with the law society to run the plan as it saw fit.

By imposing this settlement on them and by insisting on the general contribution, you are taking that independence away from them. You are in fact becoming the funder of the plan. It is very similar to the Ontario health insurance plan situation or the Ontario drug benefit plan situation. The law society becomes merely the manager of a plan set up and funded by you, to the extent that it is, and their independence is gone.

Hon. Mr. Scott: As you know very well, I cannot force anything on the law society. I suppose I could pass a law, or ask you to pass a law, but I cannot force anything on the law society and I did not purport to do so.

I plead guilty to one thing: Pierre Genest, a distinguished counsel and the new treasurer of the law society, and I, a new Attorney General, met very early in our respective terms to consider this. We both saw the problem. We both saw the need for more funds. We both saw the necessity of seeing to it that the professional contribution that had existed for 20 years be shared more broadly.

11:10 a.m.

We both were naïve politicians, I think. I have said that to him in public and he has agreed. We thought that if the two of us had a good idea, everybody would say: "That is a good idea. Let us do it." We forgot that things do not work that way in the real world. Spadework has to be done; people have to be brought along and it has to be explained to them. We are now in that process.

I am delighted the original good idea is now producing a good result. The initial reactions on both sides have modified. Both sides are prepared to discuss the principle. That is a wonderful thing. In the course of it, both Pierre Genest and I have learned something about representative politics.

Mr. O'Connor: We part ways on one significant point. Because of the nature of the funding, it is a public program. To insist that there is independence in the Law Society of Upper Canada is quite correct, but it is more analogous to the Ontario drug benefit plan or the Ontario health insurance plan situation because of the strength and power the government wields in its ability to grant or withhold funds or to dictate how the funds should be spent. It is doing exactly that. It is dictating that there shall be a contribution of $470, despite the fact that you say it is prepared to negotiate. That is not how they interpret it.

Hon. Mr. Scott: If the benchers of the law society heard that was your position, they would be absolutely horrified. That is the furthest thing from what they understand. They understand that the plan is one largely funded by government, though not entirely, in which they play a significant and important managerial and decision-making role.

Mr. O'Connor: I assume we will not agree on that because of the points I have made.

My last request was with regard to the tabling of any offers that have been made back and forth.

Hon. Mr. Scott: I will be glad to think about that, but unless I am directed, I do not propose to make available any correspondence that develops in the course of these negotiations. If I am going to negotiate as Attorney General on behalf of the government with the law society, I am going to negotiate in private and recommend to my colleagues what decision is to be taken. Once the decision has been taken, I will be delighted and obliged to advise you and answer any questions you may have about it.

I do not think it is fair when negotiating to expect that, without the law society's permission, everything it says to me or I to it will be made public.

Mr. O'Connor: I suggest, though, that the tabling of such documentation will assist in making my point, which is that there is no independence in the law society to run this plan because of the power wielded by the funder of the plan.

The tone of the negotiations, as you call them, would be clear in the letters; this is being put to it and rammed down its throat to the extent that it has little choice. It is going to have to accept this premise, because you have decided it is going to accept it.

Perhaps on that point we could canvass our friends in the other party.

Hon. Mr. Scott: If that is your conclusion, you hardly need the correspondence to document it. The deputy points out–

Mr. O'Connor: If it does not document it, why not table it?

Hon. Mr. Scott: The deputy points out that the letter of the Treasurer (Mr. Nixon) to me is already public because he released it. He also released my letter to him. Therefore, those documents are public and have been reprinted in the Ontario Lawyers Weekly or some such publication.

Beyond that, frankly, I am not disposed to go without direction.

Mr. D. R. Cooke: I want to clarify a couple of things. Mr. O'Connor, in his lengthy question, asked you if it were not the case that all those organizations disagree with your position. I think he is incorrect. Is that right?

Hon. Mr. Scott: The Criminal Lawyers' Association has been supportive of our general proposal from the very beginning. Of course, it provides a substantial proportion of the fee-for-service component of the plan.

The other two associations, the Law Society of Upper Canada and the County and District Law Association presidents, were initially cool to the proposal. I am delighted to say that, on reflection and after discussions, they have expressed their willingness to sit down and discuss it. They are going further than that; they are now preparing a proposal, although I do not know of what detail or of what sort. They have said they would like to meet with us after their studies are complete.

Mr. D. R. Cooke: I want to clarify this by making crystal clear what your offer is. As I understand it, in return for this fee coming from all lawyers, the 25 per cent deduction from a legal aid account will cease to exist.

Hon. Mr. Scott: I would not like to use the word "offer," because if I say, "My offer is this," someone in the committee or out in the world will say, "You are going to ram it down their throat." That is not the case. I have said the statute the Legislature passed requires a 25 per cent contribution to be made by those who do the work and by nobody else.

Bearing in mind that we cannot get a 118 per cent increase in the tariff, is it fair that the contribution of the society should continue to be borne exclusively by the very group that is handicapped from doing the work because the tariff is inadequate? The subject I present for discussion is this: can that contribution be translated into some other form? If it can, then it may be time to consider an amendment to the statute to remove the statutory contribution made by those who do the work.

The proposal I make is that if we have a pool of money provided in part by government and in part, notionally, by the 25 per cent of the lawyers who do the work, should we not do all we can to see that all the money gets into the hands of the lawyers who are actually providing legal aid? They are the ones I want to see get the maximum tariff increase we can achieve.

Mr. D. R. Cooke: All right. It is not an offer; it is a good idea.

Hon. Mr. Scott: I think so.

Mr. Warner: It is an idea.

Ms. Gigantes: I want to go back and try to put this long discussion, and all the politics and fun we have had with it over the past few months, in the context of these estimates.

If we look at page 30 at the 1984-85 estimates for the Ontario legal aid plan, the total expenditure, including all the elements of that plan, is $69,554,000, and that constitutes about 27 per cent of the ministry's budget. The change we are talking about in payments to the people who provide legal aid service is pretty small in that context.

I point out further that between 1983-84 and 1984-85, we were dealing with a total increase in the legal aid plan costs of just more than $4 million, which is a very small portion of the ministry total of $261,365,000. There has to be some way of looking at that cost in some kind of perspective that relates to the concerns the minister is hearing here about the service provided through our legal aid plan.

I also point out that between those two years, the federal contribution rose by about $8 million, while the total cost of the legal aid plan went up only $4 million. That meant that whatever increase there was, the feds contributed more than the province to that increased cost.

Hon. Mr. Scott: We extracted more.

11:20 a.m.

Ms. Gigantes: I am sure you are going to be at least as ingenious as your predecessor in finding ways of getting federal help on this. I think the whole discussion of payments to legal aid lawyers and the funding of legal aid clinics and so on has to be looked at in that perspective. It is not an awful lot of money we are talking about.

Let me ask one more thing. We have all gone through the Family Law Act, Bill 1, and have talked to the practitioners in the field of family law. We understand the kinds of cases they deal with, how many of them get dealt with through legal aid, how many women have to go through the legal aid system upon the breakup of a marriage to get assistance in using our family law and how very limited the practitioners who have worked in the legal aid system to assist those women have felt in operating under a legal aid system where we all know they were not getting paid adequately.

We have to look at what we want to see coming out of our system, whether this is an enormous expenditure and how long we are going to spend playing games with the law society about how we

collect the money for it. We are talking about a total increase of $4 million to the legal aid plan in the two previous years. I am not astonished by that amount.

Furthermore, I see an increase of $8 million in the contribution from the feds in comparison with that $4-million increase. I think the province has done very well, and I do not like to hear you tell us you have a hard time convincing your cabinet colleagues to pay lawyers to provide such very basic legal services in this province when we have been doing pretty well in controlling the provincial contribution to this plan.

Hon. Mr. Scott: We have been doing rather badly, if you want to know. The fact is that there has been no substantial tariff increase for a very long time.

Ms. Gigantes: I agree.

Hon. Mr. Scott: These figures are altered for the fiscal year, because my cabinet colleagues have agreed to a 20 per cent increase.

Let me respond to what you say. The figures are roughly that if the 25 per cent were translated into dollars, it would be worth $15 million; that would take care of two thirds of the fact-finder's report with the 20 per cent. We are talking about $15 million. I understand you because I used to feel, and I still do often feel, that $15 million in the context of the total provincial budget–

Ms. Gigantes: Or of your budget.

Hon. Mr. Scott: –or according to my budget, may not be regarded as substantial. However, the reality is that the justice budget in this province is about one per cent of the provincial budget, and the challenge for me is, as you put it, to find the $15 million.

There are three places to find it and no other. The first is within the justice budget, and if you will tell me the program you are prepared to abandon to get $15 million, I will consider it.

Ms. Gigantes: I have a lot of suggestions. I am not going to waste your time.

Hon. Mr. Scott: I presume it is not wages for provincial judges.

Ms. Gigantes: We will get to that.

Hon. Mr. Scott: If you will tell me the program you are prepared to abandon, the part of the Ottawa courthouse you wish had not been built or some other part of our program that will save $15 million, I will be delighted to consider whether we can get the $15 million there. That is part of my job, and I look forward to your help in finding the $15 million.

The second place to find the $15 million is to go to the Minister of Health (Mr. Elston) and say, "Give me $15 million out of your budget." Of course, he is presenting estimates before a committee that is telling him: "If you would finance prosthetic devices for certain groups in our population under the Ontario health insurance plan, it would cost only $25 million. Can you not find it somewhere else?" He will not want to and, bearing in mind the importance of health care, should not be obliged to give up $15 million to me.

The same is true of welfare. I could get the $15 million out of the Ministry of Community and Social Services. The member for Kitchener-Wilmot (Mr. Sweeney) would be very upset if I did, however, because he thinks every dollar allocated to his ministry is needed. He is concerned about its distribution, but he thinks it is needed.

If you can point out to me some other project of government that you think is less worthy, I will be glad to consider it. However, you have to tell me which project you think is less worthy than this and stand up and say, "I would rather have $15 million for this than for that." If you will tell me what you want to give up, we will look into it.

A third method is to raise taxes. You understand that this exercise of saying, "It is only $15 million" is occurring in every estimates committee that sits.

Ms. Gigantes: The fourth item is the federal contribution. This ministry has done very well in getting an increase in the period 1983-85.

Hon. Mr. Scott: I have talked to Mr. Crosbie twice in the last two months, once in Halifax and once I forget where. Every time I see him, I talk to him about the importance of this contribution. He has been very tolerant. He has not yet said he is bored. He is listening. I hope we will do even better in the future. However, the idea of which I was a victim before I came to this place, that you simply went to some big sack in a corner and pulled out $15 million and it did not cost anybody anything, it did not cost any program anything and it did not cost any citizen anything, is a nonstarter.

Ms. Gigantes: You did not have that idea.

Hon. Mr. Scott: I really did.

Ms. Gigantes: Oh, come on.

Hon. Mr. Scott: Let me tell you what I believed, if you want to know. For example, I believed that the institution of efficiencies could save large amounts of money. Every bureaucracy can become more efficient; there is no doubt about that. However, the reality is that the

institution of efficiencies can save small amounts of money, but sometimes at extravagant cost.

I can introduce a system that will save $1 million. Depending on the policing required, it may cost $1.5 million to implement. We have to be very careful before we say, "The money is around; find it". That is my job and I am trying to do it, but I reject the idea that because it is simply $15 million a wand should be waved and it should be produced. It has to come from some program or service or from the raising of taxes.

Ms. Gigantes: I am sure that when the minister is more familiar with his ministry and the government he will move to a new level of understanding of how these matters get organized.

Hon. Mr. Scott: By the way, Ms. Gigantes, I look to you for help. I would be very grateful to know what part of this program in the justice ministry your government–your party–thinks should be abandoned–

Mr. Chairman: You were right the first time.

Hon. Mr. Scott: –your colleagues think should be abandoned. We must stand up and be counted, must we not? If we are going to say to the justice ministry, "We want you to put $15 million in here," while it is not necessary, it is an act of responsibility to tell us where you think that $15 million should come from. You do not have to. I cannot compel you to say, "It must come from here," and it is certainly easier not to.

Ms. Gigantes: The minister knows that he has our encouragement when he goes to his cabinet colleagues and looks for increases he feels are justified for our legal aid plan and for payments to those people who provide services that this province would be without if we did not have a legal aid plan.

Hon. Mr. Scott: I am very grateful for your support.

Ms. Gigantes: He can argue that this very important element of our social justice system deserves what will be a small increase in his total ministry budget. Furthermore, there is the potential–we count on him to tap that potential–for getting federal attention for this very basic service. He knows he has our full support.

Hon. Mr. Scott: I am grateful for that and I use it in the sense that I rely on it.

11:30 p.m.

Mr. Warner: I think we are making a little progress. The Attorney General has shifted the argument now. It is no longer the argument that somehow we need to extract some money from the lawyers because of the autonomy question, that providing government funds somehow is a threat to the autonomy or independence of the law society or the individual lawyer. We have shifted from that argument to one of saying, "Where do we get the money?" It is a very basic argument.

Hon. Mr. Scott: I have not shifted the argument.

Mr. Warner: From your comments, I think you have. The real question is, where do you get the money?

Hon. Mr. Scott: No, that is not the real question. That is the question Ms. Gigantes proposed when she referred to $15 million–actually she did not say $15 million, she was talking of a lesser figure–could be found somewhere else. I emphasized in my answer to Mr. O'Connor that it is a problem.

If we could find the money we could find the money, but the heart of this legal aid plan is that in its broad outline it is run by the members of the profession. They have said from the beginning that this is critical to them. They do not believe a plan funded by government can be administered by government and ensure the independence of the lawyer who will be advising to take lawsuits against government. That is a value that is very important to them.

Mr. Warner: In other words, they can administer the plan although the plan is paid for by the government, and there is no conflict.

Hon. Mr. Scott: Yes. In 1974, Mr. Justice Osler's task force made a report which recommended that the plan be taken over by government and that a new agency be created called, I presume, Legal Aid Ontario. The bar of the province, the benchers and the associations I have mentioned vigorously resisted that proposal on the ground that to do that would compromise the independence of lawyers.

At that time, they made it plain they were prepared to continue to recognize the 25 per cent contribution–they did not like to do it; no one likes to put out money–so that contribution by them would justify in the public mind their right to run the plan. That is the value that they, in approaching government, said was critical to them. As a lawyer, I understand how they feel about that.

Mr. Warner: The essential problem is one of obtaining the money. It is not a problem of threatening the independence of the system. The law society can continue to administer the plan, remain at arm's length from the government and

operate in an independent atmosphere in court. The problem is trying to obtain the money. You have identified the three areas–and there are more of course–but there are some tradeoffs.

If the former government had thought it was important to increase the fees, it would not have built Minaki Lodge or Chateau Bernier or whatever you want to call it up there. That was $50 million down the drain.

Hon. Mr. Scott: What was the name of that again?

Mr. Warner: They call it Minaki Lodge; I call it Chateau Bernier.

Hon. Mr. Scott: I never heard of it.

Mr. Warner: The member for Kenora (Mr. Bernier) is the architect behind that jewel of the north.

That was $50 million, and you are looking for $15 million. There are those kinds of choices. If a government cannot see the difference between what is frivolous and what is important, then somebody ends up scratching around for money.

Rather than trying to levy some kind of flat tax on lawyers who already pay each year to practise law in Ontario–it is a unique situation for professions–the government has to figure out how it is going to come up with the extra money to pay for the fees for the legal aid system. In so doing, you chop out the frivolous and decide how you are going to alter your tax system so that people are taxed fairly and the taxes collected are sufficient to run the programs which are essential, not some pie-in-the-sky idea.

We talked about the $50 million. I could toss in, as I did before, the idea of the Premier's jet. There was another $10 million.

Mr. Chairman: That money was never spent.

Mr. Warner: Yes, but it was considered and people were prepared to spend it. At some point, you draw the line between what is frivolous and what is essential.

Hon. Mr. Scott: Do not ask me to justify those things.

Mr. Chairman: I will, if you would like me to take over.

Hon. Mr. Scott: I am sure the chairman can. He is writing notes feverishly here for me.

Mr. Chairman: I have not touched pen to paper.

Hon. Mr. Scott: Every day in this job there are new marvels. Today the marvel is that one of the prominent members of the New Democratic Party is advancing the case of the benchers of the Law Society of Upper Canada. Mirabile dictu.

Mr. Warner: It is an incredible world.

Hon. Mr. Scott: If the benchers were here, they would say, "Either we have really overcome or something different is going on here than what we understand." It is the latter that is true. What the profession recognizes, for better or for worse, is that when the plan is wholly paid for by government, someone will come along and ask, "If it is paid for entirely by government, why does government not run it?"

Mr. Warner: I did not say that.

Hon. Mr. Scott: No, but you will next.

Mr. Warner: A mind-reader.

Mr. Villeneuve: A logical follow-up for you, Mr. Warner.

Ms. Gigantes: The Attorney General was part of the commission that said it.

Hon. Mr. Scott: That is what the profession is concerned about. It regards its independence as critical in terms of decision-making. It believes that, subject to government control and broad regulations, its independence can be protected if it makes a contribution and that the administration of the plan will be left with it as long as it makes a contribution. That is why the 25 per cent is written into the statute; so it could not be removed easily.

As long as that is regarded as a value–about which you can debate at length–the question now is, should the 25 per cent continue to be contributed by those who actually do the work or should it be contributed by those who have the benefit of an independent profession, that is, the lawyers of the province? That is the issue I put before the law society to be discussed and which, I am happy to say, we will be discussing shortly.

Mr. Warner: You have changed your opinion from when you were part of the Osler task force on legal aid.

Hon. Mr. Scott: I was counsel to the task force, not a member of the task force.

Mr. Warner: You have not answered my question.

Hon. Mr. Scott: I am not going to tell you what my opinion was in 1974.

Mr. Warner: That is a bad idea.

Hon. Mr. Scott: That is another issue. If the issue is, should the law society have any part to play in the plan, that–

Ms. Gigantes: What you are saying is you are going to allow them to continue for $470 a head.

Hon. Mr. Scott: No, I am simply saying that is another issue worth considering and debating.

We are now dealing with the estimates under the existing regime. I am trying to get more money to pay the lawyers who do the work. If you want to discuss the long-term future of legal aid, that is another question.

Mr. O'Connor: Much of what I was going to say has been said.

Using your alternatives as you have outlined them, you have gone the route of raising taxes to fund the plan. What is fundamentally wrong is that you are discriminating against a small group in society. You have raised taxes against a limited group of society for a program that benefits all of society. That, to my mind, is unfair and unprecedented. I do not know of any other area of the province where we do that. You, sir, as a constitutional lawyer ought to recognize that it is discriminatory against a relatively small group of people.

I suspect the reason that group has been targeted is that it is perceived to be well able to pay that small amount. It has nothing whatsoever to do with maintaining its independence, it is telling you that now in the negotiation process.

The reason it is necessary to keep its goodwill and to keep on its side with regard to this issue is that it is vitally necessary in the delivery of this service. If you do not have the goodwill of the profession in the administration of the plan, the people of the province suffer. All those who require legal aid will suffer. Therefore, it is fundamentally necessary to be flexible during the course of the negotiations. If it does not want the $470-across-the-board levy, you have to be flexible.

11:40 a.m.

Hon. Mr. Scott: It is easy to talk in generalities. Let us talk in specific terms. The 25 per cent contribution is valued in this year at $11 million. Our proposal by which the discussions were initiated, if you want to call it a proposal, was to reduce that contribution to $8 million and to share it more equitably across the profession. We reduced the contribution they were making and asked that it be paid not by the young lawyers doing the work but rateably in some method they could select across the profession.

To say it is unprecedented is simply not true. Every profession or trade that is licensed by government to perform an exclusive service makes a contribution, either in professionalism or in kind, and submits to regulation. There is nothing new about that; it is done all the time.

The irony is that the law society may find I am difficult and hard-nosed when I get down there. If they were up here today hearing me, I think they would say, "You at least understand the value we want to protect by this exercise."

When Mr. O'Connor says, "Oh, well, do not believe what they are saying to you about their independence; that is just an argument," I do not accept it for a moment. I have been a lawyer for 25 years and I believe that when my profession talks at inordinate length about the independence of the profession, almost all of them, sometimes incoherently, believe there is a real value to be protected there. I do not cast aside what they say in that way at all; I accept it.

Mr. D. R. Cooke: There is something very precious about being able to represent a client in taking on the whole system. I am thinking mainly about criminal matters, I suppose. You are dealing with extremely competent crown attorneys; you are dealing with extremely well-financed police forces; and you are dealing with judges, all of whom are paid for and controlled eventually by the government.

To have a certificate in your hand that says you can do what is reasonable for a paying client of modest means is extremely valuable. The theory behind our legal aid plan is excellent. I went through a period of thinking the public defender system could be valuable, but I was converted some time ago to the opinion that our system is excellent. The debate this morning has been valuable. The public should be as aware as it can be of the need for the system to maintain its independence.

Having said that, I have a question that is somewhat technical in nature and has to do with the passing around of the moneys between ministries.

In the past, in our area, Waterloo-Wellington, and as far as I know throughout the whole province, the assessment to determine financial need for legal aid was always done by the Ministry of Community and Social Services. In our area, in fact, one very competent person handled a population of 400,000 to 500,000 people.

I understand that in the last few months this person's job has been phased out and the job of administering the financial eligibility for legal aid has been passed over to the plan. If that is the case, it sounds to me as if some moneys are being saved in the Ministry of Community and Social Services that are going to have to revert eventually to the legal aid plan.

If that is the case, I wonder why. I understand the Ministry of Community and Social Services at the moment is financially assisting more than 500,000 people in this province–six or seven per

cent of the population–a large proportion of whom from time to time are probably eligible for legal aid. Is it not more reasonable for it to maintain that decision-making process as opposed to the legal aid plan?

Hon. Mr. Scott: The answer is that the regulations require that the service eligibility evaluation be performed by the Ministry of Community and Social Services. You have given the reason for that and it is perfectly sensible. That department has the expertise and staff to do that kind of work efficiently. It would be silly to set up a duplicate that would just add to the manpower of government when an agency is already equipped and in place to do it.

It is not up to me; it is up to the Ministry of Community and Social Services to assess how it will do that evaluation. From time to time, depending on their manpower deployment, they retain people by contract or utilize other resources to avoid placing a special person to do the evaluation in communities where a substantial amount of the work is not required to be done.

Let us take a hypothetical example. It may have nothing to do with Waterloo-Wellington, but if you had a community where the evaluation for legal aid required only five hours of work a week and there was no other evaluation work to be done in that neighbourhood, it would be silly to place a full-time employee in that community to do five hours' work a week.

Therefore, Community and Social Services says, "Instead of doing that, for economic reasons we will delegate the work to somebody." They are responsible for seeing that somebody does it properly and according to their standards, and according to the requirements of the statute and the regulations. From time to time, in isolated communities they may have delegated that to servants of the plan. That is their business. They are responsible for supervising it and seeing it is done properly. I do not know precisely what has happened in Waterloo-Wellington. I will try to find out why that has been done there.

Mr. D. R. Cooke: My understanding is that the assessment process has been moved to the legal aid office. I thought costs were being assumed by the plan, but I take it that is not the case. I take it the cost would not be assumed by the plan.

Hon. Mr. Scott: The plan may occasionally–an example is the type you describe–do it as agents of the Ministry of Community and Social Services. I do not know whether a double entry is make in the bookkeeping to assign the cost of that exercise to Community and Social Services, whether there is an entry that removes a portion of the salary of the legal aid officer who is doing that and assigns it to Community and Social Services. It does not seem to me there would be much point in doing that. If the instances in which it occurs are relatively few, it would just be doing bookkeeping for bookkeeping's sake. That is point one.

Point two: it is desirable that, in so far as is possible, the eligibility standards should be done in the legal aid office under the direction of the Ministry of Community and Social Services or very near by. I do not want applicants for legal aid to be told more often than is necessary, "Before we can deal with you, you have to go to the next town to have your eligibility assessed." I hope we can get the thing working so that can be done either right there or very near by.

There can be nothing more frustrating to citizens, and I used to be one, than to go to a government office to get something and be told: "Before we can even decide whether you are going to get it, you have to go down the block and see somebody else. Then you have to see somebody else and come back." In so far as is possible, one wants to centralize these things.

11:50 a.m.

Ms. Gigantes: I do not know whether other people are satisfied with the discussion we have had on that item. There is another item I would like to raise under this vote, item 1.2, native court worker program.

Basically, I would like to find out what is happening with the program. Between the 1984-85 estimates and the 1985-86 estimates, which are before us, there has not been a substantial increase if we take into account any wage adjustments for 26 court workers. I would like to know the ministry's intent in this program.

Mr. Chairman: Ms. Gigantes, before you proceed, I cannot hear you clearly and perhaps others have the same problem. What item are you speaking on?

Ms. Gigantes: It is item 1.2 on page 28, native court worker program.

Hon. Mr. Scott: I am sorry, but I did not get the question.

Ms. Gigantes: I am asking what is happening and what is intended with that program. It is a program funded almost on a 50-50 basis with the federal government. The minister mentioned earlier that he felt there might be a special need for the development of clinics to provide service for native people in Ontario. I would like to get

some assessment of where the program is at and where it is going.

Hon. Mr. Scott: Mr. Carter may be able to give you more details. What the program does is described in that item and you are familiar with it. The services provided under the program are largely–I do not think exclusively–provided by the native friendship centres.

You will recall that there are two native friendship centre organizations, historically connected but now divided. One is in Thunder Bay and the other in the rest of Ontario. They provide the manpower to do this court worker activity. It is a useful and worthwhile program, as I hope you agree, and has had some very good results. You have only to go to Thunder Bay to see how well it works.

Like any program, its efficiency depends very much on the quality of the manpower delivering it. While we supervise, we are anxious that the native community, through the friendship centres, take the initiative in providing the assistance.

It is a case where we say to the federal government: "We are doing your job. You should be paying for this." Just as I bother Mr. Crosbie about the other one, I also emphasize to him that there is a primary federal responsibility in this field and that it must make significant contributions. I would like to get them up a little higher than they currently are.

Ms. Gigantes: From this description of the program, I do not have a good sense of what is happening.

Hon. Mr. Scott: What it does?

Ms. Gigantes: Let me explain. To understand what service gets provided through this program, how useful it is and whether we should be looking for more activities for it, I would like to know the number of cases that would be involved and how the case load has changed since the inception of the program. What does the program fund?

Hon. Mr. Scott: What is it designed to do? Across the province, but predominantly in certain parts of the province such as Metro Toronto, the north and so on, where there are large native populations, those populations come into contact with the justice system, although in no greater proportion than any other.

Ms. Gigantes: In much larger proportion than any other.

Hon. Mr. Scott: It depends on where you are. I think it is true in Kenora, but it is not true everywhere, I am glad to say.

However, they come into contact with the justice system. The justice system–we are talking primarily about the criminal justice system–is our system, not theirs, in the sense that it is foreign to them. The scheme of the plan is that native people, I feel strongly, especially young native people who are coming into contact with the system for the first time, should not go it alone, and it is not satisfactory in every case just to put them in touch with the normal complement of court staff.

It is critically important that they have their own people who are familiar with the operation of the system and who are familiar with the resources of the system on which they call, and the friendship centres have developed people who are equipped and skilled and who are constantly being upgraded to do this.

Up in Thunder Bay, a young Indian boy has a problem with the justice system; he is pulled in by the police and charged with something. He can go to the native friendship centre, which can put him in touch with legal aid. They can get him community assistance that he may know nothing about. They can go to court with him, and they do, and help him get adjournments if he does not have a lawyer.

If he is convicted and goes on probation, they can structure a probation plan for him that will take account of the fact that he wants to live on his reserve, which is 25 miles out of town, and that he does not have any transportation, which would normally mean he would have to take a bus to town every day to report. They can make those kinds of adjustments, and the hope is that in doing this we will eliminate the element of foreignness from the system.

The other part of the program we are developing in the north, of which I am very proud–I think it is remarkable–is a program of which Mr. McMurtry was the author. He reminds me from time to time that I must carry it on and I am delighted to do it. It is the program designed to get native people trained to be justices of the peace, so that when the court goes out on circuit to the small native communities to deal with the criminal and civil litigation arising in that community there will be, for the first time in our history, a trained, qualified judge of the same extraction as these people. We have only two. I went to the swearing-in of our second at Thunder Bay some months ago, but the program is ongoing.

Ms. Gigantes: What I am trying to find out is, in the justice system since the inception, for example, of this program in 1972, what is

changing in the rates of incarceration as they affect native people in comparison with other people in Ontario, and the age of native people who are coming into conflict with the justice system. Can we get some background material on this? I do not expect we can get into any depth in the discussion of this matter here and now.

Hon. Mr. Scott: Maybe you really want to assign part of this question to my two hours on native affairs.

Ms. Gigantes: Our critic on native affairs will have a great many other matters he will want to raise. I would like to get some background material that would take a look at what has been happening in real terms on the ground.

Hon. Mr. Scott: We know several things, and I regret to say that the picture has not changed over a decade. Young native people are not as well-educated, they are inevitably poorer and they are more frequently victims of family turmoil of one kind or another. If there ever was a susceptible group in our province, it is the young native people of Ontario, and in certain parts of the province it is a classic horror story of which all of us and our fellow citizens should be ashamed.

You ask what is being done about that?

Ms. Gigantes: No. What is changing and where does this program fit into that change?

12 noon

Hon. Mr. Scott: The long-term changes that are going to be made will not be made by the justice system. They are going to be made by an aggressive response to the problems of the native people, in which, wearing my other hat, I hope I will have some part to play. They are going to be made by negotiating with the native people the capacity, on a gradual basis, to take over local control of their own affairs. That is a most important agenda item because, if you have no responsibility, which of us would show responsibility?

That is a long-term exercise and it is a very high priority with me. That is where the long-term changes are going to occur; getting education into the communities, an education responsive to their real needs and not an education that would suit me in Moore Park.

That is long term. This deals with the sense of bewilderment and isolation that confronts this group when one of its members is caught up in the justice system. We have the same problem with witnesses. We have the same problem with women who make a complaint to the police and, all of a sudden, find they have been brought into this wringer which is the justice system. They do not understand what part they are supposed to play, what their role is, what the protections are and what their opportunities are. They are alone. Getting them a lawyer is only part of the exercise. Getting them acclimatized in a social way to the system is the other part of it. That is what this does.

Ms. Gigantes: I am looking for background on rates of incarceration among members of the native community, the age of those incarcerated, the age of those in conflict with the justice system, and the number of court workers provided under this program to meet that need over the past several years.

Hon. Mr. Scott: There are 26 court workers.

Ms. Gigantes: Yes, but I would like to know how long it has been 26 workers dealing with how many cases, of what age and so on.

Hon. Mr. Scott: I shall try to get that information. I will try to find the figures on incarceration for you, but I suspect it is not within my capacity to produce them. There are federal incarcerations and provincial incarcerations, and they may not be catalogued on a racial basis. I will do what I can to find that information for you.

Ms. Gigantes: Do you think the John Howard Society might be familiar with it?

Hon. Mr. Scott: As an ex-president, I would say no. It would have a sense of what is happening in each community, but I do not think it would be able to give you the overall picture. The John Howard Society deals with people who come to it. I can tell you, from working with it for many years, that one of the problems of an agency that deals with people who come to it is that it tends to deal with only the most sophisticated elements in the community. The people who have the most need do not have the capacity to go to it.

Ms. Gigantes: Okay; I shall welcome whatever background I can get.

Mr. Partington: Do the court workers have any special training or are they required to speak the native language? What sort of training program do they go through?

Hon. Mr. Scott: Yes, they are required to speak the language of their clientele and they are trained.

Mr. Partington: You mentioned in the material that 19 centres have court workers. How is a centre determined? For example, are most of

the centres in the north or are they basically represented throughout Ontario?

Hon. Mr. Scott: The friendship centres are native community organizations created not by government but by the native population. We fund them to provide this service. They exist where there is a community need for such an organization. Happily, they exist where there are significant populations of native people.

Mr. Partington: There is at least one court worker at every native friendship centre?

Hon. Mr. Scott: Every native friendship centre is involved in this program. I do not think there are any significant populations of native people in Ontario that are remote from a native friendship centre, but I am not certain about that.

Mr. Chairman: Is there anything further on this item? We are still on vote 1602. Are there any items relating to that? Mr. Callahan, do you have anything? Shall we call the question on vote 1602?

All those in favour will please say "aye."

Mr. Callahan: I should have done this before the vote, but I am going to refrain from voting. I have sent the Attorney General a message as to why. It is due to the possibility of a conflict.

Mr. Chairman: Is it something you can share with us? You cannot refrain from voting in committee. You can take a walk.

Mr. Callahan: I will take a walk.

Ms. Gigantes: Tell us why.

Mr. Callahan: I am a practising lawyer and there may be a conflict through the legal aid funding. That is why I am declaring conflict.

Hon. Mr. Scott: I think the Legislative Assembly Act speaks to the extent to which you have a conflict. I do not think it would make that a conflict.

Mr. Chairman: If you feel more comfortable, take a walk and you can clarify it. I will call the vote again. I will yell to let you know when we are through.

Mr. D. R. Cooke: I am still involved in a law firm that does legal aid work, but I do not think I have a conflict any more than I did when I was asked to vote on my own salary.

Mr. Polsinelli: I may be doing legal aid work in the future.

Mr. Villeneuve: All we need is a good lawyer.

Mr. Chairman: Do you know where we could find one? A number of lawyers sit on the committee by the very nature of the committee. Therefore, it is going to be very difficult for us. If there is a direct or indirect conflict, remote or otherwise, we will lose all the committee with the exception of a few lay people.

Hon. Mr. Scott: Instead of sitting around here, if they would go out and do the legal aid work, I would be very grateful.

Mr. Chairman: At the depressed prices you pay for that work, no doubt. That was just an aside.

Can we take the vote again? Is there anyone who feels uneasy about voting and wishes to take leave? Mr. Goldstein has indicated he also feels he would like to take leave at this point.

Vote 1602 agreed to.

Mr. Chairman: We can move on. We have about 20 minutes left.

On vote 1603, guardian and trustee services program:

Ms. Gigantes: On item 1–

Hon. Mr. Scott: Mr. Chairman, excuse me for interrupting, but we do not have our people here. They operate from 18 King Street East. I can get them. We might be able to deal with general questions, but if any detail is required, I can provide it within minutes.

Mr. Chairman: Can we move to another item that is convenient and come back to this?

Ms. Gigantes: This may apply to the whole vote. Does it?

Mr. Chairman: Let us get some direction from the Attorney General. To what would you like to move?

Hon. Mr. Scott: I suggest we carry on with this item. If there is a level of detail we cannot provide at this minute, I will undertake to provide it.

Ms. Gigantes: I prefer to leave it until we have the appropriate staff with us, if that is all right with other members of the committee. I can see no reason why we cannot go on to vote 1604 in the meantime.

Mr. Chairman: We can do that unless you want to carry on and, if there is a question, we can leave vote 1603 open.

Ms. Gigantes: That is just going to lead us into repeating of a whole bunch of questions.

Hon. Mr. Scott: If Ms. Gigantes tells us what she wants to know, it will help. I have to know who she wants here.

12:10 p.m.

Ms. Gigantes: I would like to be able to talk to somebody who can tell us about the changing

nature of the work being done in the public trustee's office and the official guardian's office.

I would like to be able to get some background material beforehand, if possible. I had requested from the Attorney General's assistant at the beginning of our estimates consideration that we get some background information and detail about case loads, the nature of cases and the procedures used, particularly in the official guardian's office.

Hon. Mr. Scott: I am sorry. I do not recall that being asked. I will try to get that.

Ms. Gigantes: It was informal. I asked Peter.

Hon. Mr. Scott: I will try to get that for you. I will try to see that a representative of the official guardian's office is present on the next occasion. Having said that, Mr. Chairman, perhaps we could move along to any other item the committee chooses.

Ms. Gigantes: I am quite happy to move to vote 1604, if that suits the other members.

Mr. Chairman: Do you want to stand down vote 1603 in the interest of time and move to vote 1604? Is it clear what Ms. Gigantes wants?

Hon. Mr. Scott: It is clear enough for me to be able to dig up something.

Vote 1603 stood down.

Mr. Chairman: We will move to vote 1604 then. We have stood down 1603 temporarily, and we will come back to it when the information and/or staff are here to deal with that vote.

On vote 1604, crown legal services program:

Ms. Gigantes: The part I would like to turn to first is item 1.2. I also have questions I would like to raise on items 2.2 and 2.3.

In item 1.2 on page 55, there is a broad overview of the work of the crown law office, criminal division. I guess that is what it is called. Point 4 describes a very wide scope of policy responsibilities for the crown law office. I would like to get some understanding about where some specific items in point 4 are in terms of the work going on in the ministry.

In particular, we have mention here of justice policy responsibility in the areas of cults, racial violence, diversion–whatever that is–community service orders, public defender study and victims of crime. I would like some sense of what is happening in these policy areas.

Hon. Mr. Scott: These policy areas are listed either because they derive from specific criminal cases that we are engaged in dealing with, which raise policy questions, or because they relate to programs in the ministry such as drinking and driving.

Ms. Gigantes: We know what you are doing with drinking and driving.

Hon. Mr. Scott: While run separately, they have implications for the criminal justice system. For example, in judicial independence, a major piece of litigation now concluded in the Supreme Court of Canada is the Valente case. That case raised the question of the extent to which judicial independence permitted–I should say required–administration of the justice system by the court rather than by the legislative branch of government. As you can imagine, it is a very hotly contested item.

The previous Chief Justice of Canada, Chief Justice Laskin, wrote a paper–not as a judge; he was not giving a judgement–in which he expressed the view that the estimates for the justice system should not be presented in the way they traditionally are now by a minister of the crown who would submit to questions about them, but rather that they should be submitted by the minister of the crown as a conduit for the Chief Justice. "As a conduit" was his phrase. His view has been reflected in a report called the Deschênes report, which was written by the previous Chief Justice of Quebec, in which he calls for a realignment that would give judges control of their budget. We as legislators would simply tax to raise what they required.

The policy question of who should control the justice budget has now translated under the charter into a question of independence. When judges do not control their budget or their salaries, have they lost their independence? You may have seen something in the press recently on that subject. This section of the ministry has been heavily engaged in assessing that policy question in the light of the ongoing Valente litigation, which happily has been concluded in our favour.

That is the kind of issue that occupies those people on that staff, and as you can see, it has major ramifications for how our system is going to be run. Is it going to be run the way it traditionally has been, or is it going to be run by giving over control of the justice system, in one or more measures, to others with the financial implications that that involves?

Ms. Gigantes: When you say it has been "happily concluded in our favour," you mean in favour of the legislators.

Hon. Mr. Scott: The Supreme Court of Canada, as I read the judgement–always an important qualification–adopted the decision of Chief Justice Howland in our Court of Appeal,

who said that for charter purposes, the only independence issue that connected with the administration of justice was the right of a judge to control the scheduling of his cases, his lists and I think there was a third–assignment of lists, scheduling of cases and something of the sort. The provision of other services–staff for the court, salaries and accommodations–remained a legislative and governmental responsibility.

Ms. Gigantes: Would the group that has been working so tirelessly on this item have taken a look at the Judicial Council for Provincial Judges as it exists and operates in Ontario?

Hon. Mr. Scott: Yes. It was last before the Legislative Assembly when the Courts of Justice Act was up.

Ms. Gigantes: When was that?

Hon. Mr. Scott: That act came into effect January 1, 1985; so it would have been before you in 1984.

This issue was raised at that time. One of the points made in the early stages of the Valente case, and I think I have this right, was that because the provincial judges were employees–that is their term–of the government and subject theoretically to some kind of discipline, it was an independence issue that affected them.

The Courts of Justice Act now provides the method by which a judge is disciplined. A complaint is made to the judicial council, which then conducts a hearing to determine whether a public inquiry should be held. It is after the determination of the public inquiry, itself conducted by a judge, that the discipline takes place. That response in the Courts of Justice Act was designed to leave no doubt that the disciplining of judges is not a governmental responsibility.

12:20 p.m.

Ms. Gigantes: Further, when the judicial council reviews a complaint, it reviews it in complete secrecy.

Hon. Mr. Scott: As the act provides.

Ms. Gigantes: It does not reveal what matters it reviewed or how it conducted its review.

Hon. Mr. Scott: The act provides that the first hearing will be in camera. The judicial council makes a report, a copy of which I believe is sent to the complainant.

Ms. Gigantes: Yes, it is.

Hon. Mr. Scott: You might know better than I.

Ms. Gigantes: Yes. I have just received one.

Hon. Mr. Scott: A copy of it is also forwarded to the Attorney General, I believe. Then, if a hearing is directed–that is, a formal public inquiry–that inquiry as well is in camera, and an inquiry report is made, which is forwarded to the Attorney General.

Ms. Gigantes: What I found interesting upon trying to find out the basis on which the council had done its initial hearing was that the council office is not willing to reveal what matters it considered; for example, whether it considered a transcript of the trial.

Hon. Mr. Scott: What evidence it heard, you mean?

Ms. Gigantes: Exactly.

Hon. Mr. Scott: The matters it considered are clear because the complainant has the capacity in effect to direct what it will consider. It is the complainant who writes in and says, "This is the complaint I wish to make." He or she can make the complaint as long and detailed or as general as he wants, forwarding any material he wants the judicial council to consider. That is not exhaustive; it can look at other stuff.

Because it is in camera, the statute does not permit you or me to know the evidence it has heard or the documents that have been introduced by way of evidence.

Ms. Gigantes: It is a fascinating process. I found it very enlightening. I am sure I shall again.

Hon. Mr. Scott: I thought your complaint was that it was not enlightening.

Ms. Gigantes: I found the process enlightening in that it was so unenlightening.

Mr. O'Connor: Mr. Chairman, on a point of order: We have immensely enjoyed this little chat that my friend has had with the Attorney General, but it is at the expense of the other committee members, who are working against a time limit.

If we were discussing a bill clause by clause, where there is an open end to the situation, we would all be less concerned. However, we are working to a specific time frame, and I wonder whether it is profitable for all of us to carry on in the manner Ms. Gigantes has this morning.

Perhaps there should be some guidance or direction concerning the division of time more fairly among all the members of the committee. We have only a few minutes left, and perhaps we could think about that before the next meeting.

Ms. Gigantes: I would be quite happy to do that.

Mr. O'Connor: If she were to launch into another area right now, I believe I am next on the list.

Mr. Chairman: You are next on the list, and I am attempting to recognize the members as they indicate an interest in speaking on a particular matter. We are still on vote 1604, and if Ms. Gigantes will give up the floor, I will be more than happy to give it to you, Mr. O'Connor.

Ms. Gigantes: I will do so quite gladly. On vote 1604, item 1.2, I am interested in knowing, under point 4 enumerated there, exactly what is happening on the activities that are listed. If the ministry could provide some detail about where the policy work in this area is, I would appreciate it.

Hon. Mr. Scott: I think–

Ms. Gigantes: Not now. If I could have your notes later, that would be great.

Hon. Mr. Scott: All right. Perhaps we can get something for you. The list is probably not current, as some of the matters on it now can be regarded as completed, such as judicial independence and probably seatbelts.

Ms. Gigantes: That is the kind of thing I would like to know, and whether there are new activities that are now–

Hon. Mr. Scott: We could try to prepare for you a list in point form of the areas that are being reviewed currently.

Ms. Gigantes: That would be great. Thank you.

Mr. O'Connor: I have a question with regard to item 3, seconded legal services, which I understand to be the function the ministry plays as lawyer, shall we say, for other ministries of the government.

To a great extent the services provided are paid for by other ministries. However, my concern is that it appears these services are not fully paid for annually; that is, the provision of legal services to other ministries runs at a loss. This year it is forecast to be some $354,000, which is not a tremendous figure in terms of the overall services provided in the range of $10.9 million, but it is a loss. Any private law firm simply could not function on that basis.

The minister spoke previously of the shortage of funds and the need to get funds from various sources and areas. Surely it is not asking too much of the ministry that it require the ministries for which it provides legal services to pay 100 per cent of the cost of those services. We are not asking them to pay the extra component a private law firm would expect, that is, a profit. That is not appropriate in the circumstances. Is there some reason we cannot cover the full $10,922,000 worth of services provided to other ministries?

Hon. Mr. Scott: What page are you looking at?

Mr. O'Connor: Page 62.

Hon. Mr. Scott: The point you are making, as I understand it, is that the seconded legal services, which are billed to the ministries as clients, should cover the total costs of that operation and that there appears to be a loss of $354,000 or thereabouts.

Mr. O'Connor: In a nutshell, yes.

Hon. Mr. Scott: I cannot answer your question, but I will be able to in a minute.

Mr. Knight: As a supplementary, would an answer not be that it is an accounting operation in which there are amounts billed which have not yet been paid or work done in one year that carries over?

Hon. Mr. Scott: The answer–I have it now–is that the billing is not done precisely as it would be done in a private law firm. What is involved in the $354,000-deficit is essentially the central-core operation which has to exist, whether or not any seconded services are required in that year. In other words, we have to have the capacity to provide those services even if in a happy year none was required. That means the core services, the service of the director of common legal services, three or four staff and secretarial people–

Mr. O'Connor: Surely that cannot be the answer. Why not simply divide pro rata that core-service cost among the clients for the year. I am sure the answer will be that you do not know who the clients are and what their requirements are, but that is a simple accounting function that every private firm–law firm or otherwise–faces, namely, the allocation of overhead to each and every bill that goes out and each and every client served. It does not seem reasonable that we have to incur any loss, be it a cent, for services provided to someone else.

Hon. Mr. Scott: The problem is twofold. To provide these services, we have to maintain the capacity to provide them. Even if they are not demanded, we have to have the core. You are saying, "That is all very well, but why do you not pass on that core on some rateable basis to those who have used your services over the year and we will deal with the case when nobody uses your services on some other occasion?" I understand that proposition.

The difficulty with that is it is probably not worth the paperwork it would take to do it

because you are going to get into extensive arguments about the method of division. Is a case that involves two man-days to be rated at a different rate because the men were more senior than a case that involved three man-days when the lawyers were more junior?

You have to develop a formula to apply it rateably across the other ministries. That could be managed. Again, it is a case of raising the question of how much money you want to spend and how many clerks you want to retain to make a bookkeeping entry that will not save government a single cent. That is item 1.

Item 2 is the common legal services. This was a reform of Mr. McMurtry–and a highly praiseworthy one–in which we provide these services and bill other ministries. It has as its essential component that the Ministry of the Attorney General directs those services. We do not want the Ministry of Community and Social Services or any other ministry, love them as we do, to come in and say, "We are paying for it, so we want it to be done differently."

12:30 p.m.

That is why we insist on the right to provide the core of the service. We are not like private lawyers for whom every cost should be assigned to a client who has required the cost. We want to maintain a measure of independence in the way we provide for our clients that you would not want to have, in the same sense, in your private practice.

Mr. O'Connor: It is not all that important in that it is still taxpayers' dollars and is merely a question of whose left-hand or right-hand pocket it comes out of. It just seems that the clerical argument does not wash. There are 20 ministries. Divide it up among them on some pro rata basis and it would take half a morning to do it. I raise it only in the context of your earlier comments about the shortage of funds, that one area to get it was other ministries that have similar needs to yours. Here is a legitimate way to get it from other ministries, albeit a small amount of money.

Hon. Mr. Scott: It is a good point, but it is worth observing that the extra staff you suggest we hire to do this would not save government one cent. Indeed, it would involve a cost.

Mr. Chairman: Members of the committee, we have exhausted our time. I have Mr. Callahan on. If it is a brief question, maybe we can deal with it now and then I will call for the adjournment immediately following it.

Mr. Callahan: I notice there are 44 new persons for this fiscal year. What is the rationale for allocating them throughout the various judicial districts. Is it done on the basis of case load, on the basis of population or on what?

Hon. Mr. Scott: What page are you looking at?

Mr. Callahan: It is indicated on page 56 that there will be an increase in complement in the fiscal year of 44 persons. I am curious to know how they are allocated. That is not confined only to crown attorneys or assistant crown attorneys; I gather it is clerical staff as well.

Hon. Mr. Scott: The answer is work load, but as you will understand, work load is not simply a function of the size of the community or anything such as that. It is a fluctuating function that has to do not only with the volume of cases but also with the nature of cases, the kind of expertise required and so on.

For example, I think Windsor is an area in which the expansion of work is enormous and is out of all proportion to the size of the community. That is a fact of life that you may assign to its proximity to the border or to a number of other factors. The answer is work load, but work load does not necessarily have anything to do with population.

Mr. Callahan: For instance, Peel being close to the airport would be one of the considerations.

Hon. Mr. Scott: Peel's work load may be up or down in any year depending on a number of factors.

Mr. Callahan: My final question is about funding for part-time crown attorneys or rent-a-crowns. Is that money in a big pot and each crown attorney has access to it as need requires, or is there a sectioning off of each portion for each judicial district.

Hon. Mr. Scott: The business of having part-time crown attorneys from the community obviously represents a substantial budgetary saving and is a way of responding to periodic fluctuations in case load that may or may not be permanent. Those are the two reasons for doing it. It is not done entirely by the local crown attorney. In the first place, a part-time crown attorney has to be appointed by the executive council on the recommendation of the Attorney General; so any appointments are approved by government.

Once they are appointed, the extent to which they are utilized is regulated by the local crown attorney, under the direction of the director of crown attorneys, who maintains a close eye on the extent to which and on the kind of cases in which they are used.

Mr. Chairman: Mr. Warner wants to make a brief comment.

Mr. Warner: It is a request for the next topic. Ms. Gigantes had requested some information under a particular vote, and under that same vote is the seatbelt question. I would like some statistics on the decline in the use of seatbelts, and I would of course like to know what the Attorney General plans to do about the problem.

Hon. Mr. Scott: We will see what we can find out. It is not within our ministry's knowledge. I certainly do not know how we find out how many people use seatbelts. I can tell you how many cars have them and I can tell you perhaps how many convictions there have been for not wearing them. I will see what I can find out on that subject.

Mr. Chairman, do I understand that next time we will carry on with this item and then revert to the trustee and official guardian, so I can have those people present?

Mr. Chairman: Yes.

Hon. Mr. Scott: Does the committee want to proceed tomorrow afternoon to deal with that with the Deputy Attorney General?

Mr. Chairman: The Attorney General will not be here tomorrow afternoon, so we will go back to vote 1603. It may be an appropriate time to have staff here on that item, if that meets with your agreement.

Ms. Gigantes: I am reluctant to set the precedent of doing estimates without the minister present.

Mr. Chairman: I do not want to be difficult on this question. If the staff are unable to answer a question, then we can await the return of the Attorney General. Otherwise, our schedule is going to be so entirely complicated and difficult that I would hate to tell you when we might finish the estimates of this particular committee. We all share an interest in proceeding as quickly as we can. This is not to say that your point is not valid. I have whispered in the Attorney General's ear on more than one occasion that a parliamentary assistant would probably be appropriate.

Hon. Mr. Scott: You are whispering in the wrong ear.

Mr. Chairman: The problem is that we do not have a parliamentary assistant to fill in during the minister's absence, and it does confine us to operating either with him or without him, depending on his own work load at that moment.

It is up to the committee. If you do not wish to sit, that is your decision. I am only suggesting that we do have some time considerations. We have Bill 7 coming up and a relatively heavy work load.

Mr. Warner: I share the same concern about our sitting to do estimates when the minister is not present.

Mr. Chairman: I do as well.

Mr. Warner: From whatever information we get will flow policy questions. Is it possible to sit tomorrow evening? The House is sitting anyway, so all of us are obliged to be here.

Hon. Mr. Scott: I do not know at the moment. Can I let the chairman know? I do not know where I will be tomorrow.

Mr. Chairman: You are talking about tomorrow after routine proceedings as well as tomorrow evening?

Mr. Warner: No. Mr. Scott says he cannot be here tomorrow afternoon.

Mr. Chairman: I see.

Mr. Warner: I am suggesting tomorrow evening instead of the afternoon. I do not want to delay the process either.

Ms. Gigantes: Does that place any real strain on the staff?

Hon. Mr. Scott: Obviously it does, although they always say no; so let us take them at face value.

Mr. Chairman: What do we have to do with respect to this?

Clerk of the Committee: We have to pass a motion.

Mr. Warner: We have to get a motion, and it requires the approval of the House leaders.

Clerk of the Committee: That is right.

Mr. Warner: If the committee is agreed, then it will pass it.

Mr. Chairman: The committee is not adjourned yet; we are going to adjourn very shortly.

There seems to be some feeling of support, I believe, for what Mr. Warner has suggested. We will cancel tomorrow afternoon and proceed, starting at eight o'clock tomorrow night, if that is agreeable to the Attorney General.

Hon. Mr. Scott: I cannot tell you right now.

Mr. Chairman: Are you moving that, Mr. Warner?

Mr. Warner: Yes.

Mr. Chairman: Mr. Warner moves that the committee cancel its meeting Thursday afternoon, January 8, and begin at eight o'clock Thursday evening.

All in favour of the motion? Opposed?

Motion agreed to.

Mr. Chairman: The motion was carried with one negative voice being heard. It not being a recorded vote, I will not indicate who that was.

Ms. Gigantes: Will we be meeting on Friday?

Mr. Chairman: We will meet on Friday, yes.

Ms. Gigantes: We will meet this Friday, but not the following week.

Hon. Mr. Scott: Tomorrow night do you want to revert directly to guardian and trustee services? Shall I have them here at eight o'clock?

Ms. Gigantes: That would make sense, Mr. Chairman.

Mr. Chairman: All right.

Ms. Gigantes: If we have to suspend discussion while there is further information required on the vote we are now dealing with, we could come back.

The committee adjourned at 12:40 p.m.

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Standing Committee on Administration of Justice

Estimates, Ministry of the Attorney General

First Session, 33rd Parliament

Friday, January 10, 1986

Speaker: Honourable H. A. Edighoffer

Clerk: R. G. Lewis, QC

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Friday, January 10, 1986

The committee met at 11:30 a.m. in room 151.

After other business:

12:08 p.m.

ESTIMATES, MINISTRY OF THE ATTORNEY GENERAL (continued)

On vote 1603, guardian and trustee services program:

Hon. Mr. Scott: I think the proposal was that we should revert to the vote that Ms. Gigantes was concerned about so I could have the official guardian and the public trustee present. They are both present and perhaps they would come forward to make me look knowledgeable.

Mr. Chairman: That is vote 1603. The reason we went by it earlier is as stated by the Attorney General.

Hon. Mr. Scott: This is Mr. McTavish, the official guardian, and Mr. McComiskey, first and slightly greyer, the public trustee.

Mr. Chairman: Welcome, gentlemen. We appreciate your attendance with our committee. We would like to begin discussing this issue. Ms. Gigantes, I believe you had questions. Do you want to start?

Ms. Gigantes: Thank you, I would be delighted. I am not going to be very succinct or organized in my approach. I would like to indicate my concern, particularly about the operation of the office of the official guardian.

As our legislation and practice in Ontario has changed, the role of the official guardian has changed and expanded, so I need a better understanding than I have been able to get from written materials or informal conversations.

How does the office see its role? In particular kinds of cases, two come to mind, exactly how does the office organize its interventions on behalf of children in the province?

There are two cases about which I would like to ask and have some comment. The first is the case of Adam Obert, which we dealt with in the Legislature through question period in the spring; and the second, a case in which I would prefer not to mention names, involving a teacher who was accused of having assaulted children in his classroom.

The teacher was cleared of the charges and the judge in his statement said the children involved might well have engaged in a conscious accumulation of accusations against the teacher which was without base. He felt the person who had been charged should be found innocent because there was the possibility that he was innocent. I think that is a perfectly sound approach to a judgement. However, I wonder what role the office of the official guardian might take in a case where one child or a number of children make an accusation which seems serious enough to go to court. Are they represented when they put forward their testimony? I do not understand how the office works on these matters.

Hon. Mr. Scott: Before the official guardian responds to those cases, I want to confirm with the committee that in a general way, the office of the official guardian is obliged to investigate circumstances that are brought to his attention regarding the welfare of children and in cases where the appropriate judgements are made, to represent the interests of those children before the court.

The official guardian is a senior law officer and has status in the court to do that. However, as you and the other members of the committee know, he is simply a counsel in the proceedings. The orders are made by the court after hearing the various parties, which includes the official guardian, but they are made on the authority of the court itself. It is understood that when an order is made in a particular case, the responsibility for the order is that of the court, not that of the official guardian or any other ministry.

Ms. Gigantes: That is well understood.

Hon. Mr. Scott: Mr. McTavish, do you want to make any particular comment on that case?

Mr. McTavish: On the Obert case, we were appointed by court order and represented the child through all court proceedings. We placed the child's wishes to the court and to the Court of Appeal, and they were always consistent with what the child wanted.

It was a matter of enforcement by the father against the child of the order made by the Court of Appeal, which was against our argument. In other words, the Court of Appeal made its decision. The father backed off the enforcement

of that order. It was a happy resolution, because of the public outcry.

Ms. Gigantes: Two things concerned me as I reviewed what material I could gather on that case. One was to understand how the initial presentation of Adam Obert's views on being forced to visit his father was made. At the preliminary stages, did the court fully understand the strength of his feelings? Did it have before it a psychological assessment of the child which would indicate the strength of that feeling?

Mr. McTavish: The counsel who argued the case is not here. As I understand it, there was a conflict in psychiatric evidence. There was evidence from a psychiatrist to say how strong the boy's will was that he did not want to see his father.

However, there was other psychiatric evidence that he ought to see his father. The Court of Appeal accepted that evidence over the evidence we laid on behalf of the boy. The conundrum in the courts is the balancing of the evidence. All the evidence was presented, as I understand it.

Ms. Gigantes: My understanding is that the court accepted the evidence of a psychiatrist who felt the boy should see his father, and that psychiatrist had never seen the child.

Mr. McTavish: That may be. I would have to check it.

Ms. Gigantes: In that case, I fail to understand how a strongly presented representation on behalf of the boy would have led to this judgement.

Hon. Mr. Scott: I would like to intervene here. That is exactly what I sought to emphasize. The member's view may be entirely right as a matter of judgement. If Ms. Gigantes and I composed the Court of Appeal, a highly desirable event perhaps, the result might have been different.

Ms. Gigantes: That is not what I am saying.

Hon. Mr. Scott: Questions about the propriety of the court decision, which I do not rule out for a moment, should be directed at me and not at public servants whose function is to present the cases before the court.

You are certainly entitled to question whether the case was presented effectively, or whether all the material was before the court, but that has to do with the competence of our staff.

To ask the question, "How could the court come to such a decision," which is the way you put it, is to–

Ms. Gigantes: I did not ask that question.

Hon. Mr. Scott: I am sorry. Perhaps I misunderstood.

Ms. Gigantes: What I said, without asking a question, was that it is beyond my understanding that a properly presented case, representing that child's views, could have inspired the judgement that was made.

I have no question about the judgement. What I am questioning is the strength of the case that was presented on behalf of the child. I feel there may have been a weakness in the role that was executed on behalf of that child by the official guardian's office. That is my opinion and I bring it to your attention.

The second matter of great concern to me in that case was that when the Court of Appeal upheld the judgement, it indicated that the custody of the child might be in jeopardy. If the grandparents, in particular the grandmother, did not do everything in their power to exercise their influence on the child to get him to follow the court order, their custody could be questioned.

I cannot understand what we do in such cases, but I would look for some enlightenment. We had an initial court judgement which, upon reflection, a lot of people who think about it quite seriously feel was based on a badly presented case. In any case, it was a judgement that certainly the official guardian's office felt should be appealed–

Mr. McTavish: We did appeal it.

Ms. Gigantes: I know. That is precisely what I am saying.

Mr. McTavish: We said it was wrong.

Ms. Gigantes: But it was a judgement that created such concern that when the case goes to the Court of Appeal, not only do we not get a reversal of the judgement, but we also get, as far as I am concerned, the child being put in further jeopardy.

Now there is a Court of Appeal judgement which says to the grandparents, "Either you get that child to follow the order of the court, or else you are in danger of losing custody."

Grandparents aside, for the child our system of justice has produced a situation first where he is ordered to see his father and second where a Court of Appeal judgement can say to him: "We are going to tear your life apart completely now. We are threatening to remove you from your grandparents." What are we doing in Ontario when this can happen?

12:20 p.m.

Hon. Mr. Scott: Let me tell you what we are doing.

Ms. Gigantes: The outcome of the case has been, as the official guardian points out to us, a happy one. But that happiness can be quite temporary. If the father decides at any point that he is going to insist on a Court of Appeal judgment, he has a legal right to do so and the outcome for that child is still totally in balance.

Mr. McTavish: No.

Hon. Mr. Scott: Let me tell you where we stand. It is an important question. I do not know enough detail of the case, but I accept your view which criticizes the determination of the Court of Appeal.

That is a criticism that a citizen and certainly an honourable member is perfectly entitled to make. Let me assume it is justified. I do not say it is, because I do not know enough about it, but let me assume so. I was going to say that is the price we pay. That is not the appropriate phrase. It is a fact that follows from the independence of the judiciary, which is a constitutional value built into the constitution of the country, and a practical value built into the Courts of Justice Act.

As honourable members know, there are thousands of cases decided by the trial courts and the Court of Appeal over the course of a year. Some of them are criminal. Some of them are of the very important type to which the honourable member refers. Honourable members and their constituents naturally feel aggrieved by the decision of one case or another. There was a question in the House today in which an honourable member felt very strongly that the court had given the wrong result.

I have a couple of points. First, to the court's credit, that happens relatively rarely when one considers the volume of cases. That is not to say it should happen, but it happens relatively rarely.

The second is the executive branch and the legislative branch cannot interfere in that process. What they can do is persuade the Attorney General to appeal or to ask in certain limited cases that the case be reviewed. That is the ambit of our powers.

I have been saying for some months that I cannot do things to close down businesses or to fix sentences just because I personally would like to do it. Neither can any other honourable member. That is the court system.

Ms. Gigantes: What–

Mr. Chairman: Ms. Gigantes, before you begin, I have one comment. We have less than an hour available from the outset of estimates. I have a long speakers' list. I did not want to cut off debate on this issue but I have others who are concerned that we may not have these gentlemen with us on another occasion. Could we focus this as quickly as possible, allow you to continue, but then move to Ms. Fish, Mr. Callahan, Mr. Cooke and Mr. O'Connor? I ask for your consideration.

Mr. D. R. Cooke: In continuing, perhaps Ms. Gigantes could focus on her accusations. She has made very broad accusations of incompetence without any evidence to back them up. I would like to hear her evidence.

Mr. Chairman: Was that the point you wanted to raise on the list or did you have another one?

Mr. D. R. Cooke: I will expand on it.

Mr. Chairman: I would like to take you off the list, if I can, to shorten it.

Mr. Callahan: On a point of order: I am a new boy on the block, but it seems to me that we are here examining estimates. I would submit, with the greatest of respect, that the honourable member is raising something that does not deal with the estimates.

Mr. Warner: Vote 1603.

Mr. Chairman: A broad interpretation of estimates has been the rule. Quite frankly, this is the interpretation of the chairman, who is not a new boy on the block but who is relatively new. However, I have chaired committees of this type before and I have to tell you that estimates are very far-reaching and may include any activity within the purview of the Ministry of the Attorney General. It is not out of order at all.

Mr. Callahan: Fine, thank you. That is all I want to know.

Mr. D. R. Cooke: I will reserve my place in the speaking order, depending on Ms. Gigantes' reply.

Mr. Chairman: Ms. Gigantes has the floor; and then I ask your indulgence in moving on to the other members.

Ms. Gigantes: What attitude will the official guardian's office take and what action can be undertaken through the official guardian's office if at any point in the future in a case of this nature, and I refer specifically to the Adam Obert case, the court judgment is going to be enforced?

Mr. McTavish: Certainly we will interview the boy and keep representing him and his wishes. We will do whatever we can to convince a court not to do anything contrary to his wishes. That is my job in life, that is what I have been doing, and that is what I intend to continue to do.

Ms. Gigantes: The second case that I wish to have comment on–

Mr. O'Connor: Mr. Chairman, I am going to jump in here on a point of order. There are 10 members of this committee. Time is limited. It is slipping away. We have something like four hours left. In all fairness, surely you should go through the rotation before Ms. Gigantes who, in anybody's estimation of percentage of time, uses the majority of the time of this committee for her issues, raises a second case. This is not to minimize her issues. They are important. The Obert case is an extremely important case. But as Mr. Callahan said, it is a case that is in the past. It was decided by the Court of Appeal and it has had a thorough airing at a number of levels, including now. Surely in fairness the rotation should go on among the other members before she gets into a second case she wants to raise.

Mr. Chairman: That is not unreasonable. I am trying to allocate the time in a reasonably fair way. Ms. Gigantes, would you mind giving up the floor and letting us continue the rotation?

Ms. Gigantes: I would be quite willing to do that. Perhaps it would assist us if the minister would refrain from giving prolonged lectures on the nature of our judicial and political systems and let us get to the essential matters I wish to raise. That would be helpful, too.

Ms. Fish: My query is for a general explanation that arises from page 46 of the green book which outlines the activity area of the official guardian. The first sentence says, "The Official Guardian provides legal services for minors, unborn and unascertained persons..." I would like to understand under what conditions and circumstances the official guardian would provide legal services for the unborn.

Mr. McTavish: We have provided them in estate matters, since the Lord Chancellor requested someone to interpret for the court those human beings who are about to be born in a class of human beings under an estate, a trust, and for interpretation of how the property would flow through the passage of time. It is restricted solely to property right.

Ms. Fish: In your view, is there the possibility that in representing the unborn that area of property right could involve the official guardian in a dispute about a question of an abortion?

Mr. McTavish: I would prefer not to answer that. I would prefer to discuss that with the Attorney General.

Ms. Fish: May I have a policy reply from the Attorney General?

Hon. Mr. Scott: Yes. I think the answer to that question has to do with the nature of the proceedings that may present themselves. For example, if the proceedings that present themselves are criminal, the number of interests that can be heard by the court is very limited. You have the crown interest, which is the prosecutorial interest, and the defence interest.

The honourable member will know that we are moving, and she may think this may be an entirely desirable thing, to a very limited right to have the views of the victim heard in sentencing on certain criminal matters. That is the limit the courts have permitted.

Whether someone will be heard by the court is not for us to say; it is for the court to say. In criminal cases the court has so far fixed very clearly the interests that may be heard. They are the interests of the prosecution and they are the interests of the accused defendant.

12:30 p.m.

In one or two isolated cases, the courts are moving to permit the interests of the victim to be heard, but only with respect to sentence. In criminal cases, the court fixes who can be heard and the issue has not so far arisen in any criminal case.

In civil cases, the range of interests that may be heard will be fixed by the court, not by us, and may be broader. As Mr. McTavish pointed out, in estate cases unborn beneficiaries of an estate are now permitted by the court to be heard and have been for some time. What we will have to see in the future is the extent to which the court broadens its rules to permit new or other interests to be heard in individual cases. If it does, the responsibility of government, the public trustee, the official guardian and so on, may become involved if those interests are going to be heard.

Ms. Fish: Perhaps I have not made myself sufficiently clear. I understood very well from the Attorney General's earlier answers to other members' questions that the court fixes certain things. But I also understand that in this area, as in others, the court may have in front of it an initiative or a request from a variety of people to be heard. My question is not what the court will decide; that is not your area of responsibility or an area in which you can direct. My policy question is, will the official guardian expand upon or find himself in a position where the requirement to represent the unborn in a property circumstance extends into a position where the official guardian seeks to represent the interests of the unborn in an abortion-related case.

Perhaps what is in the back of my mind might be of benefit here, but I am thinking of what I consider to be a very worrying trend whereby the

purported fathers of the unborn are bringing forward motions to enjoin the natural mothers of the unborn from proceeding with abortion procedures.

I asked what areas the official guardian can get into with respect to the unborn. The reply is that it is confined to property. It would not be beyond the realm of possibility to conceive of an application that might be grounds for an injunction based upon a variety of things and somehow include an entanglement on property within the rationale. I ask it because it then becomes not only a policy question but also, perhaps because it may not be clear and cut and dried, a question of interpretation reverting again to the Attorney General.

Hon. Mr. Scott: I understand the question better now. It is established that the court will decide who and what interests can be heard. Your question really is: recognizing that the court will decide, will the official guardian activate himself to invite the court to hear him in the kinds of cases you have described?

Ms. Fish: Is that the policy? That is what I want to know.

Hon. Mr. Scott: The practical answer to the question is that in the present state of the law, apart from some isolated areas, there is no purpose to activating oneself to be heard because the law is clearly against the right of those interests to be heard. There have been, as I noted, some exceptions.

We are not going to encourage the official guardian to activate himself or to invite the court to hear him in those cases where the court, as a matter of judicial policy, has decided, "We will not hear you." That deals with all cases that I can imagine, outside of some sentencing cases and estate cases and outside of one or two cases that occurred in Ottawa where there was a question about applying a drug to a woman where the foetus might be affected medically by the utilization of the drug.

The short answer to your question is we are not going to, as a matter of policy, assert a greater right to intervene than the court has traditionally allowed us.

Ms. Fish: Just so I understand, you did cite the Ottawa cases that dealt with the administration of drugs, coming interestingly into the area of drug-induced abortions, as well as other medical procedures. I simply want to understand where the line is drawn.

Hon. Mr. Scott: It may be that Mr. McTavish can help us but the Ottawa case, which was Dagelman, decided the foetus had no right to be heard in the court.

Mr. McTavish: I think that is correct.

Hon. Mr. Scott: That would reflect the kind of judicial policy I am referring to. The court, therefore, has decided that in that kind of issue the foetus has no right to be heard.

Ms. Fish: Given that, would it be the policy of the official guardian to try to be heard in some other such case that–

Hon. Mr. Scott: It is not currently our policy to persistently ask the court to hear issues that it has indicated it is not going to hear.

Ms. Fish: I am just trying to understand. You said when you referred to the case that the court decided there was no right to be heard and that forms part of the body of that decision and–

Hon. Mr. Scott: Of the law.

Ms. Fish: –that law then speaks to the policy. Thank you very much.

Hon. Mr. Scott: We have to respect that law.

Ms. Fish: Thank you very much. I hope you continue to do so.

Mr. Chairman: To deal with the matter we had some problem with a moment ago with respect to the allocation of time, with the concurrence of the committee the chairman will arbitrarily establish approximately a 10-minute dialogue between a questioner and the ministry with respect to estimate items. That is not uncommon in committee.

I will not hold it to exactly 10 minutes, but I will try to be as flexible, pragmatic and fair as possible. I will keep the rotation in mind. If that satisfies everyone, you can anticipate that when the 10 minute limit gets close I may start to cut you off. Mr. Callahan, you are next.

Mr. Callahan: No, I was raising a point of order. I have been told you can go into these matters. I thought we were just dealing with estimates. I waive my–

Mr. O'Connor: I would like to explore an area that is of continuing frustration, shall I say, between the family law bar, particularly, which is my background, and the official guardian's office. That is with regard to the preparation and presentation of the standard official guardian's report which is required in every divorce case involving children that comes before the courts. I will make a few comments and ask a few questions, if I may.

With regard to the standard uncontested divorce where there are children, and I do not know whether it is the rules of the Divorce Act

that require the presentation of this report, the practice is that the official guardian sends a set of forms to each of the parties and each party completes them and sends them back.

Notwithstanding people sending their forms back by return mail, virtually upon their receipt, in my experience there is still a considerable delay of up to five or six weeks involved in even the most routine of cases, the standard case. That may be a little long. I see the official guardian expressing some doubt about that figure.

However, my standard comment to clients on the first interview in the divorce, after determining whether there are children, is that if there are no children involved I can have them divorced in four to five weeks if we are able to waive the 90-day waiting period. If not, it is three months more.

However, if there are children involved, and even though all issues such as custody and access have been resolved and it is the most routine of matters, it is an additional five to six weeks. Could the official guardian address the problem of whether there might be some way of speeding up that process?

12:40 p.m.

The second area I wanted to explore is with regard to the contested divorce case. There has almost been a long-standing joke within the profession about whether the official guardian's report in a contested case is of any value or of any influence whatsoever on the court. Until recently, my understanding had been that the purpose of the investigation by the official guardian was to provide some objective assessment of the situation to assist the court in determining the questions, particularly of custody and access.

However, if you ask anyone about the quality of those reports, you will receive the standard response that they are of little help or use. I would suggest in most cases they are not even read by the judge in the custody or access dispute in question.

What appears to be in most of those reports is simply a recitation of the position of each of the parties without any kind of recommendation as to what should happen. I can simply point out that is what the lawyers are there for. That is their function. Their responsibility is to put the case for each of the parties. Can there not be some further step by the official guardian's office in making some strong recommendations. They are an objective assessor of those facts.

I can tell the official guardian that if a strong position were taken in a particular custody or access case, almost inevitably that would resolve the issue before the court, saving time, money, agony and acrimony between the parties. Can he address these two issues?

Mr. McTavish: I would be delighted, Mr. O'Connor. As you know, I have been in this office for 13 months. That very question was on my mind for the last 15 years of my practice. It was one of the curious elements that attracted me to applying for this job. I sat on Canadian Bar Association, Ontario committees–

Hon. Mr. Scott: I thought it was the salary.

Mr. McTavish: I like solving problems. This problem interests me greatly.

In February, we retained a child mental health expert by the name of Douglas Finlay, who said, "I think I can address the relevancy of the official guardian's reports in two or three months." It took him seven to nine months to do so. It is an extremely complex problem.

I made up my mind only two days ago about where I would like to go with the problem. I have yet to be able to discuss it with the Attorney General, but I see him next week. Without giving you my view as to where I think we should head, because it is a little different, I can tell you that under section 125 of the Courts of Justice Act, I am required to investigate every divorce in Ontario. There are 14,000 of them. It takes a lot of human effort to get responses back and to file the official guardian's report within the 60-day period.

We do that in about 90 per cent of the cases. In 60 days we will have filed back a report. I agree with your criticism that the report does no good at all in uncontested cases, if there are no problems. The problem is that there are cases in which there are problems, and which of the 14,000 cases are they? The problem then boils down to looking at the raison d'etre of these reports. Are we to catch one child or are we to lose that child by taking the net down. That is the issue.

In other words, should section 125 of the Courts of Justice Act be amended so as not to require the official guardian to investigate every divorce case in Ontario? That is the question. Should his resources be more attuned to representing children in the best possible way and becoming more relevant?

Identifying the cases that you have discussed, and that is where there is a contested divorce, why should the official guardian get in and do another assessment, home study and so on, when the parties have properly identified it, hired psychologists, psychiatrists or social workers or whomever under section 30 of the Children's Law Reform Act and filed that in court? As long

as I am satisfied that the children's interests are being cared for by their mom and dad, I do not do it.

What am I going to do for the children in the cases where they are not, where mom and dad are being somewhat neglectful? Without it involving a child in need of protection, which is the child welfare system, how are we going to identify them? That is the issue on which I want to discuss this with the Attorney General. I agree with you, it is a very important question.

Mr. O'Connor: I do not know that you have answered either of my questions. Perhaps you are not inclined to do so. I think you have rephrased them in two or three ways, probably better than I put them.

Hon. Mr. Scott: That is not a judgemental observation; that is just an observation.

Mr. O'Connor: Let us go back to the routine divorce where there are no problems. Is your mandate wide enough or does section 125 permit you to do nothing?

Mr. McTavish: No; it says I shall investigate.

Mr. O'Connor: For instance, upon filing the divorce papers, if both lawyers were required to notify you that there were no issues as to custody and access, would that not be sufficient for you to write the brief report you already write, which is one line and says there are no problems? You would have complied with the requirement to cause an investigation. Albeit the investigation would have been very brief, it would have been an investigation. The turnaround time could be done, with a reply letter, in seven days instead of six weeks. Although you say you try to do it within 60 days, that is not my experience. That is area number one.

Hon. Mr. Scott: I would like to respond to that as a matter of policy. If the official guardian conducted the statutory investigation in the fashion you described, I would take the view that he had not fulfilled his duty under the statute. The official guardian has raised the possibility of a statutory amendment that runs the risk that an isolated case, or perhaps more, will be missed. That is a question of policy we will have to approach.

Mr. O'Connor: Is he not already doing what I suggested in a slightly more elaborate form? He is requiring each of the parties to file a 10-page form that says, in essence, there are no problems with custody and access. What would be wrong with a letter from each of the lawyers on day one saying there are no problems with custody and access, and then doing his report?

Hon. Mr. Scott: The 10-page form is an investigative tool that provides a series of responses to a series of questions to enable the official guardian to make some kind of independent judgement about whether the one-line statement is correct.

You are asking, "Why do we not have just the one-line statement?" If we did that, and it might be a sensible policy decision, I very much doubt it could be said on any theory that the official guardian was conducting even the most perfunctory investigation. Therefore, it would be in breach of the statute.

Mr. O'Connor: What we are doing is stating the two extremes. Perhaps what should be done is some compromise that will speed up the process in the routine case. I leave that with the official guardian to consider as an initiative he might take.

The second area I wanted to get into more particularly is this. Can he interpret his mandate–

Mr. Chairman: May I remind you, Mr. O'Connor, that according to the rules I set before–

Mr. O'Connor: I am in the same area I mentioned before. Can he interpret his mandate as one of giving a definite decision, in his opinion, as to what is in the best interests of the children rather than simply regurgitating the position of both parties which the lawyers can do in court?

Mr. McTavish: That was the reason for my previous answer. It is very complex and I agree with you. I would like to take that position. Previous instructions by the previous official guardians were to make no recommendations. I disagree with that view personally, but that is something I want to discuss with the Attorney General.

Mr. O'Connor: Good, thanks.

Mr. Callahan: I would like to address that second part. If that is the approach to be taken, one would hope the people who were making those recommendations–

I am assuming the official guardian is really a fact-finder. If you are going to go to the second step and make recommendations, my concern would be that in the criminal process when a pre-sentence report is put forward the recommendations are often based on either improperly obtained facts or an improperly reasoned opinion.

I hope that if you are going to go to the second step, it would require the employment or the retaining by the official guardian's office of

people who were qualified to make those judgements. What would happen is you would have a contest in the court between the husband's and wife's lawyers and that recommendation.

From my practical experience, the judge would probably give greater weight to the recommendations made by the official guardian. This could result in an injustice. Therefore, I hope that if you are going in that direction there will be the expertise and not simply the ordinary process in place now where, as I understand it, with all due respect to the children's aid society which you send out to the children, these people or whoever is making that final judgement may not be qualified to make definitive statements.

Mr. McTavish: I agree with you. We should be in the witness box, backing up our recommendations. We are there to assist the court in coming to a decision with proper credentials and training.

Mr. Callahan: You are really making the investigation on behalf of the court which is pater patriens in terms of looking after the child's interests and dissociating himself from the assertions of the typical adversarial variety that you should believe me, him or her. The court has to satisfy itself that the best interest of the child is always the paramount reason for making that decision.

Mr. McTavish: Exactly.

12:50 p.m.

Ms. Gigantes: I would like to come back briefly to the question I had mentioned earlier. That involves the role of the official guardian's office in a case such as the one I have described, where a charge is laid against an adult for child abuse in which one child or a number of children are involved. As a matter of course, would the official guardian's office be notified and be involved? Obviously it is not a question of representing the children. The children would simply be witnesses in a prosecution undertaken by the crown. Does the official guardian's office get involved in such cases; and if so, how?

Mr. McTavish: We occasionally get into them. If we are representing, through our child representation program, a child who because of the abuses is declared to be in need of protection or if that is the issue in front of the court, then part of the unravelling of that factual situation usually involves the charging of the abuser. We will improve that system and are exploring ways and means of doing so. That is another item that I wish to discuss with the Attorney General. It involves the crown attorneys and the sensitization of the crown attorneys through this process.

Do the crown attorneys want us there on behalf of the child, to hold a child's hand in the nicest way possible, to make the experience more comfortable and understandable? Should that be the crown attorney's function or should that be my function or should it be a combination?

Ms. Gigantes: In the case to which I referred, essentially what we saw was a group of children of a young age who accused a teacher. In court, what you come down to is the question of who is lying. Either the children are guilty of lying, although they are not charged with malicious prosecution or making false accusations, or the adult is lying. It seems to me that children involved in a case like that, and again I do not question the judgement made in the case to which I refer, have a right to have somebody represent them, to assist in establishing their legitimacy as honest witnesses.

I tried but could not find out in this case–I just have not pursued it hard and fast enough, I guess–whether the official guardian's office had been involved. I do not imagine it is a singular case. I imagine as time goes on other cases of this nature will arise.

You seem to suggest that the crown attorneys should become more sensitive to the possibility of inviting the official guardian to get involved, but do you see any need for us to develop a system where it would become automatic in cases like this?

Hon. Mr. Scott: Before Mr. McTavish tells you that is something he wants to talk to me about next week, let me begin by telling you that the cases you are referring to, as I understand it, are by and large criminal or quasi-criminal cases. The role of the crown attorney is to investigate, to interview, to call the witnesses for the crown. We think it is important that the crown attorney should be sensitized to dealing in a supportive way with witnesses of all types–children, women and men, who may find the experience a threatening, unusual or intimidating one.

Ms. Gigantes: That is not–

Hon. Mr. Scott: The courts do not permit, as yet, as far as I am aware, each crown witness to attend with the assistance of his or her own counsel. That is not to say that a crown witness cannot have a counsel who can sit in the back of the room and watch what goes on. By and large the witness's counsel has no right to participate in the case. That is the role of the crown attorney. When we get on to that item, you will want to ask us about whether crown attorneys are effectively discharging that sensitive role.

Ms. Gigantes: No, currently it is the role of the crown attorney in cases that involve children. In cases where it involves adults, that is one matter. In cases where it involves children, I think we should be looking at the policy question of whether there should be an involvement on the part of the official guardian.

Hon. Mr. Scott: The policy question is decided by an examination of the statute, which invokes the Criminal Code rules–you will want to go to Ottawa to make some representations on that subject–on the limits to which the court will permit that kind of intervention. It is an important question. As a policy matter, however, it seems to me that at the present time the law requires that we be restricted to allowing the crown attorney to provide that function in the court setting.

Ms. Gigantes: I suggest that in cases which will arise, and which have arisen, there may well be a reason we should be amending our provincial processes so it becomes automatic that the official guardian or a representative of his or her office will be involved on behalf of the children involved.

Hon. Mr. Scott: In the courtroom?

Ms. Gigantes: Yes, in the courtroom and before court proceedings.

Hon. Mr. Scott: I understand your point.

Mr. Chairman: We still have a couple of minutes left. Is there anyone else who would like to comment? Do you want to call the vote on 1603?

Ms. Gigantes: We have not been able to talk to the public trustee at all.

Mr. Chairman: We are not ready for that then.

Hon. Mr. Scott: Could we agree that the official guardian might be excused?

Mr. Chairman: Is that agreed? Is there anything further for the official guardian?

Hon. Mr. Scott: I do not think Mr. McComiskey has much choice, but I will ask him to come back next time.

Interjection.

Hon. Mr. Scott: We understand. After all, this is a democracy.

Mr. Chairman: Would the committee like to carry vote 1603, item 1, which we have now dealt with?

Item 1 agreed to.

Mr. Chairman: The public trustee will be back for the beginning of our next session.

The committee adjourned at 12:59 p.m.

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Cooke, D. R. (Kitchener L)
Fish, S. A., Vice-Chairman (St. George PC)
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From the Ministry of the Attorney General:

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Ontario

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Standing Committee on Administration of Justice

Estimates, Ministry of the Attorney General

First Session, 33rd Parliament

Thursday, January 16, 1986

Speaker: Honourable H. A. Edighoffer

Clerk: R. G. Lewis, QC

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday, January 16, 1986

The committee resumed at 8:11 p.m. in room 151.

ESTIMATES, MINISTRY OF THE ATTORNEY GENERAL (continued)

On vote 1603, guardian and trustee services program; item 2, public trustee:

Mr. Chairman: We have completed vote 1603, item 1; we are now at vote 1603, item 2, which is the public trustee.

Hon. Mr. Scott: Mr. McComiskey is here, and I would ask him to come up and sit at the table.

Mr. Chairman: Does the Attorney General have any comments on this item?

Hon. Mr. Scott: No, I have not.

Ms. Gigantes: I would like Mr. McComiskey to put on record for us the current situation concerning the review of management of estates of people incapable of managing their property.

Mr. McComiskey: That committee, under Stephen Fram of the policy development section of the ministry, met all last year and made the report. Then its duties were enlarged to consider the whole issue of guardianship of the person or committeeship of the person. Those two different areas must be brought together.

Some things are being decided this year by a committee which is an enlarged version of last year's committee. This year we are meeting every Tuesday night. On that committee there are representatives of the medical profession, psychiatrists, pyschologists, adult protective service workers and social workers.

Some of the things that will come out of the decisions this year will have to be looked at in the light of what was decided last year and put in the report on the estates. Similarly, some of the things that were reported on last year may have to be changed or modified as a result of decisions that are made this year.

Ms. Gigantes: Do you expect the work going on this year to take the whole year?

Mr. McComiskey: At the rate we are going now, yes, I think it is going to take the whole year. It is amazing how many divergent opinions there are, partly because of geographic location and partly because of differences of opinion as to the standards that are needed and which people need guardians.

Some areas are quite clear. There are individuals who need a guardian to give consent to medical procedures. There are individuals who might be drug-addicted, alcoholic or just reclusive; they need a guardian to get them in to get the necessary treatment. Whether that is a legal or a medical procedure is still up in the air.

A great many people could probably use some assistance in some way. That assistance might come from organizations such as Link Skills and the Ontario legal aid plan or from constituency offices. I am not sure all these people need a person as guardian. Divergent opinions are presented by patient advocates, psychiatrists and social workers.

Considering the progress we have made so far, I think it is going to take the whole year.

Ms. Gigantes: As you are working with the second round of the task, are you sensing that there may a change to the recommendation in the interim report, that the existing definitions of the Mental Health Act should be the test for certification of inpatients or outpatients of a psychiatric facility?

Mr. McComiskey: No, I am not anticipating any change in the Mental Health Act.

Ms. Gigantes: Is it your expectation that this part of the work of this committee will be in accord with the recommendations of the interim report, which suggests a new act, that governs both areas, should not impinge upon the medical certification process?

Mr. McComiskey: The Mental Health Act is from the Ministry of Health, not from the Ministry of the Attorney General. When they talk about a comprehensive act, they are talking about a replacement for the Mental Incompetency Act, not for the Mental Health Act.

Ms. Gigantes: I understand. I find it very strange–and perhaps you can help me understand–that when such a large portion of the people affected by legislation governing financial incompetency and your role in assuming trusteeship, get that designation through a medical certification over which there seems to be so little definition, that issue seems not to

generate a lot of discussion. Why is that? Also, I do not understand the grounds on which people get medically certified.

Mr. McComiskey: I guess the facts speak for themselves. I suppose there are times when people go into psychiatric facilities when they might be treated in some other way. However, they usually go there because they need the treatment.

Ms. Gigantes: Yes, but outpatients can be treated. Even within the interim report it was noted that some patients are put on a list as outpatients of a facility simply for purposes of having the role of the public trustee come into play.

Mr. McComiskey: There are a number of individuals in chronic care hospitals, homes for the aged or nursing homes who after a while are not able to attend to their business. They cannot even pay the maintenance charges for where they are and have nobody to do that for them.

The administrators of the nursing homes or homes for the aged, or the administrators or doctors at the chronic care hospitals, report to us that there is a patient in that institution who is not able to look after his own affairs and has nobody to do it for him.

One procedure–and this still has to be done in chronic care hospitals–is that when they report it to us, I then cause proceedings to be taken under the Mental Incompetency Act to have the public trustee appointed. The trouble with that is there is a cost to it, because it is a court proceeding. Whether I do it or some other lawyer does it, there is a cost to that proceeding, and it is a time-consuming procedure.

One can argue the civil liberties problems in connection with it. However, as a means of quickly getting at least care of the assets of that patient, the procedure that evolved under the Mental Health Act for having the patient recorded as an outpatient of a psychiatric facility and thereafter certified, means that steps can be taken quickly and inexpensively to look after his affairs.

8:20 p.m.

Ms. Gigantes: I am concerned about that process, I must say, and there is some concern expressed in the interim report about that part of our legislation.

Hon. Mr. Scott: Just so I understand, in what sense are you concerned?

Ms. Gigantes: In the sense that it becomes a convenient and easy way to administer a situation where, for whatever reason, people in the community, in a facility, or wherever, decide that somebody must be declared financially incompetent. They then take over, in a kind of delegated way, the effective day-to-day administration of the financial affairs of somebody who is totally dependent on the facility or the institution.

Hon. Mr. Scott: Mr. McComiskey has to labour under the existing regime, for which I am responsible in a policy sense. The practical difficulty you confront, I presume, is that on the one hand, you have the desirability of having a court-supervised method of determining competency which will protect the civil liberties interest and the other legitimate interest in not being determined incompetent when you are not, and an independent forum. The court is in place to do that.

On the other hand, you have to weigh that against the very great personal damage if an intervention does not occur often enough. I do not have the statistics, but I would not be surprised to hear that for every case where the system goes awry because someone who might not have been declared incompetent has been exposed to that possibility, you would probably have lots of cases where the assets of elderly, ill people are frittered away by those around them because no steps have been taken.

You have to try to steer a course in the legislation that protects both interests. We would be glad to have any help we can get as to what we should be doing to make the system fairer.

Ms. Gigantes: On the whole, the interim report is a very good one; the issues it tackles are real ones, and the proposals are very interesting and positive. Can I ask about the second round, which you are into now? Is it the same committee? You talked about psychiatrists, social workers and so on.

Mr. McComiskey: There are some members on this committee who were on the original committee. Mr. Fram was the chairman in the first round, and he is still the chairman. There are still representatives of the county court judges, the Advocacy Resource Centre for the Handicapped, the Canadian Mental Health Association and the Canadian Association for the Mentally Retarded. The present group also includes representatives of the working group of the Ministry of Health, the Canadian Hospital Association, the Canadian Medical Association, the adult protective service workers and the psychologists' group.

The first committee consisted of 14 members, I believe. There are 23 members on the present

committee, and about half of them were on the first committee.

Ms. Gigantes: Could we get a list of the members of the current group?

Mr. McComiskey: Certainly. I do not have it here tonight, but a list can be produced.

Ms. Gigantes: One of the other points I would like to raise very briefly arises out of the study that was done for the Canadian Mental Health Association in which an estimate was made that the case load of the estates officers was about 2,300 estates each. Is that a correct estimate?

Mr. McComiskey: No, that is a little out. We are managing approximately 18,000 estates. Most of those come under the Mental Health Act, and about 300 of those come under mental incompetency orders. I have 16 people–eight estates officers and eight assistants. They each carry approximately the same load. Each one is managing approximately 1,200 estates, not 2,300.

Ms. Gigantes: It is still a very heavy load.

Mr. McComiskey: Yes, it is a heavy load. They are kept busy.

Ms. Gigantes: Do you have any comments that you would like to give us on the study that was done for the mental health association? There were some pretty vigorous criticisms of the existing system, which in some senses would probably carry over into the new system if the recommendations of this report were adopted.

Hon. Mr. Scott: When I was a lawyer, I suppose I would say, "You just ask the questions and we will give the answers." However, I cannot say that here. So, Mr. McComiskey, you answer that.

Mr. McComiskey: I felt the young man who made the report did not spend much time with us. On the whole, I thought it was a well-written report. However, I do not think he really understood some of the things. Without the report in front of me, I have forgotten the specifics of it; but I do not think the problems he saw were really there.

My office is basically set up to manage estates. We could probably go further if we were in the social work field. We are not in that field at the moment, but if some of the changes being proposed came through, I would have to have a social work staff to work more closely with patients and their families than the present system foresees.

Ms. Gigantes: In fact, we would be talking about a system that would have two parts to it; your office would be one part.

Mr. McComiskey: It might be that my office would be both parts, but with two branches. You might have a public guardian looking after the person, and the other part looking after the estate. That has not been decided by the present committee.

Ms. Gigantes: How far do you think we are from legislation on this matter?

Hon. Mr. Scott: I do not know the answer to that question. We have not decided to effect any yet; therefore, I cannot tell you how long it will take.

Ms. Gigantes: If you were to decide to effect any in a particular year to get a report from this committee, would it take another year before we could expect to have legislation passed?

Hon. Mr. Scott: It might.

Ms. Gigantes: I assume the program of operations for the fiscal year 1985-86, as it is described on page 48 of our estimates book, is almost accomplished by now.

I am curious about the meaning of paragraph 1, which reads:

"As a result of amendments to the rules of practice under the Courts of Justice Act, the public trustee is now to represent as litigation guardian mental incompetents not so found and absentees."

What does that mean? What is a mental incompetent "not so found"?

Mr. McComiskey: It means a person who is practically unable to manage his or her affairs but who has never been so declared by an order of the court under the Mental Incompetency Act.

Ms. Gigantes: How would such a person come to your attention?

8:30 p.m.

Mr. McComiskey: First of all, it used to be the official guardian who performed that task. When the new Supreme Court rules came in, that role was transferred from his office to mine.

What happens is that a litigant starts litigation, or becomes involved in litigation, and the lawyer he has consulted comes to the conclusion that he cannot get instructions from his client. He then advises our office that his client is not able to give instructions.

Sometimes the matter even gets as far as trial, and it is the trial judge who says, "I am concerned that this individual really does not understand what is happening." The way it comes about most commonly is that a litigant or plaintiff may be entitled to recover a very substantial amount of damages. This litigant could carry on and spend his weekly paycheque or pay for his

groceries, but he might not be able to handle $100,000. The judge becomes concerned that if that amount of money were given to the litigant, he could waste it or be defrauded of it.

Some judges have made orders which in effect circumvent the Mental Incompetency Act. They make an order that the amount of the judgement is to be paid to my office to be managed by me as though I were a committee under the Mental Health Act, but always subject to the further order of the court.

There was a committee under Mr. Justice Richard E. Holland reviewing the whole issue of damages. It came to the conclusion that it was not a bad system. It avoided the person being declared incompetent, and yet there was some provision for helping to protect his assets.

Ms. Gigantes: Is this a new role as a result of the Supreme Court?

Mr. McComiskey: No, it is not a new role. It is a new role for my office, but it was previously done by the official guardian. As far as I could estimate, it would be about 60 cases a year. Sometimes those have to do with such things as motor accidents. More frequently, at the moment, they have to do with domestic or family disputes.

Ms. Gigantes: The whole description of the program of operations for the fiscal year 1985-86 on page 48 inspired me to write in the margin to myself, "Indicates some concern?" It seems to be a description of a process in flux.

Hon. Mr. Scott: Where are you reading from now?

Ms. Gigantes: That was my marginal note to myself.

Mr. McComiskey: We cover more than mental incompetency. We have a role in corporations, in charitable supervision and in deceased persons' estates. Our work under the Crown Administration of Estates Act is not changing.

As a result of a Divisional Court decision in the Laidlaw case, I was asked to chair a committee to review the Charitable Gifts Act. I worked all spring with a group of senior lawyers from the bigger firms in Toronto who acted for most of the major charities. We met through April, May and June. A report has been drawn on that, but it is so comprehensive that it is too unreadable to offer to legislators. At the moment, I am trying to work out a shortened and more understandable version of what is a very complex legal matter.

There may be changes there. Because of the work being done by the Fram committee last year and this year, there may well be some changes in mental health law.

As you know from the other report, a suggestion has been made that we might add another kind of representative. At the moment, you can appoint an attorney to act for you. There is the committee, who in one way or another is appointed when you have lost your capacity. The suggestion in that report is that there might be another group called "conservators" that you could nominate now but who would assume the role only if, as or when you became incompetent.

There may well be changes coming about.

Ms. Gigantes: Would you expect them before implementation of this interim report and recommendation?

Mr. McComiskey: No, I would not.

Ms. Gigantes: So we are still a good way from change.

Mr. McComiskey: The problem is to decide what is the right change.

Ms. Gigantes: Thank you.

Hon. Mr. Scott: Change is always present too.

Mr. Partington: Under your terms of reference, you administer estates that escheat to the crown. How many estates each year would fall into that category?

Mr. McComiskey: Actually very few. Surprisingly, we find beneficiaries all over the world even though we start with no knowledge at all. Many of the estates come from the Iron Curtain countries. It is very rarely that do we not find beneficiaries. I could not give you the number of estates, but the dollar value that escheats to the crown would be about $300,000.

Mr. Partington: At the bottom of page 111, under "Public trustee, escheated estates," the amount for 1984-85 was about $1 million. The amount for 1985-86 is estimated to be $950,000.

Mr. McComiskey: That would be high.

Mr. Partington: I also have a question about the administration of estates of people who are incapable of managing their own affairs. Is someone in your office appointed as the committee, or is there a private appointment that is supervised through your office?

Mr. McComiskey: We are basically not involved at all where there is a private committee. Even though some of the courts ask us to be served, if we were not previously involved in that individual's affairs and if the application is being made by a person, usually a relative, to whom I can see no objection, then I advise the court that I

am not able to consent, reasoning that I do not know anything about the individual and the matter is for the judge's discretion. I do advise the court that I will not attend.

When the private committee goes to pass his accounts, some of the district court judges, particularly in the Ottawa area, insist that my office be served. There is a growing tendency in the district of York for judges to ask that my office be served. If there are beneficiaries of that family who are living in the county and can well attend on their own, then I do not attend.

The district court judges take the view that they do not have the time or expertise to review these accounts and understand them and that there ought to be someone to look over those accounts who decides impartially between the incompetent and his own committee. Such cases are mainly in the Ottawa area, and my office does attend them.

Mr. Partington: What would be the total value of assets under control of the crown through the public trustee's office?

Mr. McComiskey: Do you mean of the crown or of my office totally?

Mr. Partington: Your office totally.

Mr. McComiskey: That value would be $320 million.

Mr. Partington: Do you know what amount of money is raised annually through the Charitable Gifts Act?

8:40 p.m.

Mr. McComiskey: I do not know how much is raised through the Charitable Gifts Act. I am not even sure I understand that act, to be quite truthful, and I do not know anybody else who does. We may get two inquiries a year about that act. It is one of the things that was discussed and considered by the committee that operated in the spring.

That is something that will require a little attention from the minister at some time. We expect to make recommendations for amendments to the Charities Accounting Act and the Charitable Gifts Act.

Mr. Partington: When I was looking at the financial statement on page 47 under the heading "Services," I noticed a substantial drop of $132 million in the expected expenditure for the year 1985-86 over the 1984-85 actual. What are those services and why the substantial drop?

Mr. McComiskey: I am sorry I do not have the breakdown of those figures with me. We put in a substantial mechanized filing system one year; that is not a repetitive expense. We hoped it would save personnel, and it has to some degree. Certainly it is more efficient.

Mr. Chairman: To pursue one question raised by Mr. Partington, what was the intent of the Charitable Gifts Act? What was the original purpose of its being set up? My understanding is that it was a watchdog. Obviously that is not its purpose if only two inquiries a year are received.

Mr. McComiskey: I have read in Hansard the statements Mr. Frost made when the Charitable Gifts Act was introduced. He stated the purpose as being the following:

First, charities had tax benefits, and it would be unfair to the ordinary taxpayer to compete with a charitable organization in the same business that had tax exemptions.

Second, often in charitable organizations there was an attempt to preserve the positions for members of the family; they became closed shops and therefore lacked expertise.

Finally, charities did not have to report to shareholders as such, and therefore they were not going to be as efficient as a commercial corporation that had to report to its shareholders each year.

I have problems with the act because I do not know what a 10 per cent interest is. Some days I am not sure what an interest is. I think it was intended that the public trustee should become a watchdog, although the act does not say who is in charge. I am not sure I am. I am fulfilling the role even in my doubt.

Hon. Mr. Scott: Mr. McComiskey, you are being very diplomatic. Was it not said by some at the time that the legislation's special purpose was to deal with the assets of the Toronto Star newspaper and the foundation created to own them?

Mr. McComiskey: Yes, it was. Those statements are also in Hansard. I was looking at the stated purpose as it was put by the government of the day.

Hon. Mr. Scott: We Liberals often wondered what the purpose of that act was.

Mr. Chairman: Maybe we will find out as we proceed a little further.

I will not belabour the question other than with respect to charities operating on the line in terms of either fraudulent or questionable behaviour. In your opinion, would the front line of defence from a provincial standpoint be the Ontario Provincial Police? What other agency takes up the role of reviewing the activities described in part as perhaps being one of the initial purposes of the Charitable Gifts Act? charities operating

on the line in terms of either fraudulent or questionable behaviour. In your opinion, would the front line of defence from a provincial standpoint be the Ontario Provincial Police? What other agency takes up the role of reviewing the activities described in part as perhaps being one of the initial purposes of the Charitable Gifts Act?

Hon. Mr. Scott: As I am sure Mr. McComiskey will tell you–and he can get into it–there is another act called the Charities Accounting Act, which I gather is the act that gives Mr. McComiskey certain responsibilities with respect to charities.

Mr. McComiskey: Yes.

Hon. Mr. Scott: That is not the act we were first talking about; it is a different act.

Mr. McComiskey: There are the two, the Charitable Gifts Act and the Charities Accounting Act. The Charitable Gifts Act is designed to prevent charities from carrying on business. Quite frankly, that presents problems because charities are encouraged to raise their own funds. Therefore, you face the spectre of places such as the Hospital for Sick Children having research foundations, the Young Men's Christian Association running a camp at Geneva Park or the hospitals running gift stores and parking lots. Examples like that may put them in a position where they contravene the Charitable Gifts Act.

The big problem today is with the senior citizens' residence. Let us say a charitable organization or civic group of some sort decides it would be a great idea to have a senior citizens' residence; it raises funds or buys land and then goes to Ottawa for funds. Ottawa says, "Yes, we will give you a substantial mortgage, but in order to make this a viable proposition, we think your housing development ought to have a variety store, a grocery store, a hairdresser's shop and maybe a liquor store on the main floor." In that case, the charitable group is actually a landlord. Technically, that puts it in violation of the Charitable Gifts Act.

Apart from that, under the Charities Accounting Act, I am entitled to demand financial information from charities each year. Although I do not have an adequate staff to do it thoroughly, we look at the financial statements, the amounts being raised and see whether the amount attributed to administrative expense is a reasonable and fair proportion of the amount taken in. That procedure starts through a court motion. It brings you into surrogate court accounting, which is a very detailed and expensive form of accounting. Again, I think we will make some recommendations for change.

What other organizations are there? Really none, except the Better Business Bureau is talking about setting up a charities section. I have some reservations about the plan, I must say. It is only in the planning stage at the moment, but people will be able to call and say: "Is this a valid charity to which we can contribute? What does it do? Have you had any complaints about it?" In the final analysis, I suppose the fraud squad could be involved, but so far that is not a practical answer.

Mr. Chairman: With the indulgence of the committee–I do not want to take the committee's time–I want to pursue this a bit more. Since you do not have an adequate staff to police the issue, would your activity in this field today be more along the lines of responding to a complaint from a better business bureau or someone bringing questionable behaviour on the part of the charity to your attention? How do you initiate your activities in terms of any kind of review one might make?

8:50 p.m.

Mr. McComiskey: We are lucky that those who become involved in charitable work do an excellent job, honestly and with integrity. I do not like to quote a percentage, but I would say more than 99 per cent do a great job.

By looking at financial statements, we sometimes find things that do not appear quite right. We contact the charity and say: "We have seen this. We think you need to correct your procedures in this way." Generally, we get their co-operation to bring things into line.

Otherwise, we get complaints from disgruntled employees, from dissatisfied people who made donations and from members of the organization who are not satisfied with the way it is being run.

By using the big stick of the Charities Accounting Act and saying, "Unless you get your act in order, we are going to take you before the court to review your accounts"–and that is an awfully onerous and expensive task–we find we can get most of them in line.

There are some bad apples, there is no question about that. I have to confess that by the time you get after a bad apple, too often the fund is gone and there is very little you can do about it. One of the thoughts that has been suggested is that directors of charitable organizations could be held personally responsible for the deficiencies of the charitable corporation. The law on that is

pretty doubtful at the moment, but perhaps some change will be made that would bring that about.

Mr. Chairman: I raise those questions because I have some concerns, although not about the legitimate charities, which you suggest comprise 99 per cent of the activities that are going on. However, the experience to the south of us, that of our friendly neighbour, the United States, and in other jurisdictions, suggests we may get an increase by way of infiltration and the sophisticated, white-collar type of criminal activity. Some of that takes the form of charities, in its broadest sense.

I do not know what changes you are proposing in terms of the kind of response you would hope to be able to bring forward, but government mechanisms should gear up for the time when some of those activities do take place. It would appear that a number of organizations in the United States have raised substantial sums of money under the guise of legitimate charities and then have simply disappeared, for all intents and purposes, before the law can react.

At the moment, I do not know how serious the problem is in Canada or in Ontario, other than that you read about it occasionally. The difficulty I see is that by the time one reads about it, it is usually too late to do anything. I do not know whether that is a concern on the part of your ministry or whether the changes you are proposing would address that kind of problem, if it is a problem you anticipate having.

Mr. McComiskey: Fortunately, the incidence of that so far has been very rare. We get the odd complaint, but very few come to our attention. You sometimes hear complaints, but the type of organization you are talking about in the US has not come here yet. That is one of the reasons we think we need a more computerized office: to have a list of these people, to know where they are and to improve our control over them.

Hon. Mr. Scott: I want to be the last to stand in the way of anybody buying a computer for any purpose, Mr. Chairman, but I suspect most of the kinds of things you are concerned about are outright frauds in which a person comes into the community and goes door to door, collecting money for some fund that does not exist or is simply a shell to enable him to take the money. That kind of activity, when a complaint is made, is more effectively dealt with by the police.

The role of Mr. McComiskey under the Charities Accounting Act, as I understand it, is to look at their year-end financial statement, to analyse the extent to which the money has been devoted to the charity–or the proportion of the money received that goes to overhead, or something like that–and to make the appropriate inquiries and seek an accounting if necessary. The fraud artist you are talking about will probably be in New Brunswick by the time it comes to preparing an annual accounting statement.

Mr. McComiskey: I agree with that. Our procedure is a slow court process; it will not control the quick-buck artist.

Hon. Mr. Scott: The point I am making is that, by definition, if you want to prevent these events from occurring, you get the police to deal with that. By definition, Mr. McComiskey's function is after the event; it is an accounting exercise. Has the charity spent 27 per cent on administration when a reasonable charity would have spent only 12 per cent? That is the issue, is it not?

Mr. McComiskey: That is right; but sometimes a control through that allows us to have the necessary reforms made in the whole operation.

Hon. Mr. Scott: Certainly; but under this statute, you are never going to be in a position to catch people who are seeking donations on the doorstep for illegitimate purposes.

Mr. McComiskey: No. All we could do would be to eventually put them out of business.

Mr. Chairman: What about the proliferation of the quasi-religious groups, which again are more prevalent in the United States than they are here?

Hon. Mr. Scott: What do you mean?

Mr. Chairman: By way of definition, how do you know what they are, and do you get involved with them at all? As an example–and I do not want to name names, although I could if you like–there was an organization in the US Midwest that was eventually prosecuted by the US government. It was a religious group of a type, but it raised very substantial sums of money and established a commune of one kind or another, and all the donations were charitable. Would that kind of thing come under this act?

Mr. McComiskey: It would come under this act, but so far, I know of no problems of that sort here.

Ms. Gigantes: Along the same line, we had a small scandal in the Ottawa area recently when the Ottawa Police Association hired a fund-raising organization which I believe was based in the United States. The method of raising funds was to call people on the telephone and offer tickets for sale for poor kids to go to a circus. I

received a telephone call and I declined. However, a few days later, there was a fair uproar in the community about it. As I understand it, the level of administrative costs for that operation was well over 27 per cent.

Mr. McComiskey: It was probably about 92 per cent.

Ms. Gigantes: Was it? Is that kind of thing happening, and how would you hear about that?

Mr. McComiskey: Yes, it has happened. There are a number of versions of it. One of them is toys for children at Christmas, where a backroom operation comes to a specific city and says to a fraternal or charitable organization in the area, "We would like to do this in your name," whether it is the Lions Club, Kiwanis International, the Rotary Club, the police or whoever. They then telephone people in the community and say, "We are calling on behalf of this organization, seeking contributions for toys for children."

The person who makes the telephone call is working on a commission of 15 per cent. We have had experiences where the net amount of dollars raised that went to toys for children was six to eight per cent. That is a travelling road show; it does not operate in the same community each year. They are here one year and in a different city the next.

Ms. Gigantes: With this latest controversy in Ottawa, I understood that it had happened before.

Hon. Mr. Scott: If I may make a point, that is a police problem. Correct me if I am wrong, but the role of Mr. McComiskey's office is not that of a policeman; it is that of an accountant. The kind of problem you are directing yourself to is one the police should be invited to respond to when the citizen has real reservations about what has been said to him or her about the charity.

Ms. Gigantes: The police were invited to respond publicly. In one interview I heard with a spokesperson for the association, it was pointed out that this was not the first year the police association had undertaken this co-operative venture. They felt there was no fraud involved and certainly no criticism warranted. To whom does one complain?

9 p.m.

Hon. Mr. Scott: When Mr. McComiskey gets that outfit's annual statement of profit and loss, its financial statements or whatever–

Ms. Gigantes: Would he not get the statement from the charitable arm of the police association?

Mr. McComiskey: The police association may not be a charitable organization at all; it may just be a fraternal organization.

Ms. Gigantes: Right; I see.

Mr. Chairman: By and large, you are accounting for those who fall in the category of the good guys. The bad guys would not get to you, based on what you have told us so far this evening.

Mr. McComiskey: They sometimes do as a result of complaints.

Hon. Mr. Scott: The bad guys do not normally file a financial statement about their operations over the past year. They usually move on before the time to file a financial statement has come.

Ms. Gigantes: In the situation in Ottawa that I described, would you recommend making a complaint to the Ontario Police Commission?

Hon. Mr. Scott: I would complain to the police commission, to one's member of the Legislature or to the Ontario Provincial Police.

Ms. Gigantes: One's member of the Legislature has raised it here. What are we going to do about it?

Hon. Mr. Scott: I think it is a police problem. There are lots of scams occurring, from people going door to door giving home owners the opportunity to have their chimneys repaired when there is nothing at all wrong with their chimneys to people selling tickets to nonexistent circuses in aid of some charity, also usually nonexistent. Those are frauds perpetrated upon the public.

Ms. Gigantes: I believe there was a circus.

Hon. Mr. Scott: Every fraud has some elements that bear relation to reality. Most sophisticated frauds have quite a few.

Ms. Gigantes: You say it is a police matter, yet the problem seems to be that the police force is providing the air of respectability for the whole money-raising venture. You say to raise it in the Legislature, and I am raising it. What can we do at the provincial level about this kind of thing?

Hon. Mr. Scott: When someone comes to your door selling circus tickets to aid the policemen's benevolent fund, you do not automatically assume you are protected because the person has mentioned the police, any more than you assume that when a person says he or she is selling tickets to a circus for disabled children, the very mention of disabled children is sufficient to satisfy you that everything is all right.

In so far as we can, people who are confronted by these things either make their donation and forget about it or, if they are suspicious, telephone the police force.

Ms. Gigantes: They complained to the police. You understand what I am saying?

Hon. Mr. Scott: I understand what you are saying, but it does not follow that the police force has anything to do with what you are describing.

Ms. Gigantes: They were aware of the level of administrative costs and seemed to find them satisfactory.

Hon. Mr. Scott: I take it you are telling me there is a case in which the police in your community sponsored sales of tickets.

Ms. Gigantes: Yes.

Hon. Mr. Scott: You are dissatisfied with what they were doing.

Ms. Gigantes: I was not alone.

Hon. Mr. Scott: No, I am sure. However, you and your friends were dissatisfied. You were reluctant to complain to the police force because you were afraid it would not make a fair determination.

Ms. Gigantes: I heard an interview that would have discouraged me from placing a complaint with the police.

Hon. Mr. Scott: That is hard to believe.

Ms. Gigantes: The spokesperson for the police force said the whole operation was quite satisfactory from the point of view of the police.

Hon. Mr. Scott: You can complain to the police commission or you can write to Mr. McComiskey, although it may be too late in the day.

Ms. Gigantes: Mr. McComiskey is probably aware of that event.

Mr. McComiskey: No, I am not aware of that event. We might not be able to do anything about last year, but we might make them concerned about doing it another year.

Ms. Gigantes: That would reinforce the community attempt to do the same thing.

Mr. Chairman: I know of the case about which Ms. Gigantes is speaking because it happened in more than one community. The operational procedure of that group was exactly the same in a number of different locations. The expense related to the total gross was well in excess of 90 per cent. I assume you are saying that Ottawa is the jurisdiction in which it happened in your case.

Ms. Gigantes: Yes. It was sponsored by the Ottawa Police Association.

Mr. Chairman: It has happened in other cases as well. I assume the methodology used by this group was to take the circus and use a police organization, usually the local police association, as the name that would add credibility to its appeal. It was by direct telephone solicitation.

Ms. Gigantes: That is correct.

Mr. Chairman: The kicker was that if you bought a block of tickets, then a number of underprivileged children would be taken to the circus as part of the package. Of course, it never came to pass. First of all, the underprivileged children never got to the circus, and the profits did not get to the police association, at least not in the amounts one would assume to be reasonable. There were a lot of questions in regard to that kind of thing.

Ms. Gigantes: Mr. Chairman, given that you and I have had that experience in a community, perhaps we might ask Mr. McComiskey, on his own initiative, to let the Ontario Police Commission know about the problem. If it is widespread and the name of the police in Ontario is being used for such scams, then we should bring it to the attention of authorities in the province.

Hon. Mr. Scott: Let us stop a minute. If I may make one observation, you have both given us highly anecdotal accounts of what happened, and I am respectful of your views. On your doorstep or on a friend's doorstep–

Ms. Gigantes: No, on my telephone. I was called.

Hon. Mr. Scott: On your telephone. If you have a complaint to make, do not give it to Mr. McComiskey. Drop me a line and we will look into it and see what is happening.

Ms. Gigantes: You can take it as read that I have dropped you a line on it.

Hon. Mr. Scott: You had better write me a letter, because I do not remember everything that is said here. I intervened in that way because it is a little unfair to Mr. McComiskey to say, "This is my problem; will you go back to the office and look it up?" and when he comes around next year say, "What did you do?"

Ms. Gigantes: Okay. You make it your problem.

Hon. Mr. Scott: Make it my problem; that is exactly it.

Ms. Gigantes: Good. It is your problem.

Hon. Mr. Scott: Drop me a line.

Ms. Gigantes: By registered mail.

Mr. Chairman: Mr. Scott, I raised some of these questions to get a better understanding of what Mr. McComiskey's role was, not for the purpose of giving him a case load to take home in his briefcase tonight.

Hon. Mr. Scott: I understand.

Mr. Chairman: If anything has come out of this discussion, it may be at least some sympathy from this committee for a beefing up of that role. You are indicating that something may be done in that respect.

Mr. McComiskey: Yes. We will make recommendations.

Mr. Chairman: Obviously, that is a question for the minister to respond to–

Hon. Mr. Scott: Neatly finessed by this unusual combination of you and Ms. Gigantes.

Ms. Gigantes: It is obviously a widespread problem.

Hon. Mr. Scott: You have now identified a problem. You have predicted the solution. You have got Mr. McComiskey to say he is going to make a recommendation about it. You are doing fine, but we are eating up a lot of time.

Ms. Gigantes: Mr. Cooke points out that it covers both ends of Highway 7. This is serious.

Item 2 agreed to.

Mr. Chairman: Thank you, Mr. McComiskey. We appreciate your time and input on that matter.

On item 3, Supreme Court accountant:

Mr. Chairman: Do you have any staff to bring forward, Mr. Scott?

Hon. Mr. Scott: Mr. McGann is the accountant for the Supreme Court of Ontario.

Ms. Gigantes: I have no questions to ask on this item.

Mr. Chairman: Do any other committee members wish to raise questions with regard to Supreme Court accountant? If not, we can dispose of this item rather quickly. I see no nods, twitches or hands raised.

Item 3 agreed to.

Hon. Mr. Scott: Mr. McGann, very well done. Thank you very much.

Mr. Chairman: I appreciate that presentation as well. Succinct, to the point and most comprehensive.

9:10 p.m.

Ms. Gigantes: On a point of order, Mr. Chairman: Would the clerk tell us how much time we have left in the estimates?

Hon. Mr. Scott: I was just going to ask.

Mr. Chairman: We will be dealing with the balance of time on Tuesday, but I would guess that we have close to two hours left.

Vote 1603 agreed to.

Mr. Chairman: Ms. Gigantes, where did you want to move from this point? You were discussing this earlier. Should we go to vote 1604, or did you want to go back over something you mentioned to me earlier?

Ms. Gigantes: No, I was just trying to find out where we were.

Mr. Chairman: How much time do we have left?

Clerk of the Committee: Two hours and 28 minutes.

Ms. Gigantes: My colleague Mr. McClellan indicated to me that he wished to speak to vote 1604. He is not able to be here tonight. Could we agree to revert to vote 1604 on Tuesday?

Mr. Chairman: The chair has no objection to that. Can we move to vote 1605 and come back, with the understanding that if he is not here on Tuesday–

Ms. Gigantes: I do not mean to cut off any other discussion on vote 1604.

Hon. Mr. Scott: Mr. Chaloner, who will be dealing with those items, is going to be in Montreal at the young offenders conference on Tuesday.

Ms. Gigantes: But you will be here.

Hon. Mr. Scott: Is Mr. McClellan in the building?

Ms. Gigantes: Not to my knowledge.

Hon. Mr. Scott: I will be here, but I cannot undertake that I will be able to give the level of detail and information that Mr. Chaloner could.

Ms. Gigantes: Mr. Chairman, if you will excuse me, I will go to see if I can find whether Mr. McClellan is in the building.

Mr. Chairman: All right. In this case, the committee can have an understanding that we can deal with vote 1604 and finalize our discussions on that item, with the understanding that Mr. McClellan can come back and reopen the item. In effect we would be giving unanimous concurrence in advance to reopen it, but it would clear off any further discussion from the members of the committee who are here now.

Mr. Polsinelli: Would that not be left to our discretion, Mr. Chairman?

Mr. Chairman: You are so co-operative. I just do not know how to take this.

Does the committee agree to deal with vote 1604 now? Agreed.

On vote 1604, crown legal services program:

Mr. Polsinelli: I take it we will let the time quietly run by while Ms. Gigantes is searching for Mr. McClellan.

Mr. Chairman: If you would like to chat–

Mr. D. R. Cooke: I have a question on vote 1604 dealing with crown attorneys' salaries. I constantly hear they are not going up as fast as they should. Is there any comment?

Hon. Mr. Scott: Let me tell you about that. I have said many times, and I think it is true, that the level of compensation for our crown law officers, who are crown attorneys, of course, and civilian employees of the crown law office is inadequate, and is particularly inadequate in relation to the rates of pay that are found in the private sector. That has been the case for some time.

In October last year there was a four per cent increase retroactive to April 1. On January 1 of this year there was another four per cent increase, effective January 1. In addition, there has been a revision of the classifications into which crown law officers of various levels of seniority, expertise and background are slotted and a removal of the population controls, with the result that we have been able to do two things in the last while.

One is to create a system, which the previous Progressive Conservative government actually created but never funded, of new classifications without population controls, which has meant a change in classification for something like a third of the crown law officers and has given them two increases of four per cent. That is a step in the right direction.

However, the reality is that crown law officers who look to the private sector will remain dissatisfied for a very substantial period of time with the level of remuneration they get. The reality, which I have had occasion to explain recently to other people who get their pay from the public Treasury, is that the level of compensation for Ontario public servants falls substantially behind the level of compensation that is now common in the federal public service. That is true of provincial judges, crown law officers and a range of other employees. It is unfortunate, but the only remedy is to increase taxes. Ministers are paid substantially less than those in Ottawa. Do not look so shocked; it is true.

Mr. D. R. Cooke: I understand that. Is the Attorney General's office at all involved in the salaries in other ministries?

Hon. Mr. Scott: The salaries of lawyers?

Mr. D. R. Cooke: Yes.

Hon. Mr. Scott: For the most part, I think without exception, lawyers who do legal work in other departments of government are on the staff of the Ministry of the Attorney General and they are in effect seconded to those other ministries. They respond to direction from the Attorney General's staff. They are our people in the field, as it were. They are crown law officers for the purposes of this discussion and for the purposes of hiring, regulation and control, just as if they were doing work in the criminal or civil divisions of the ministry itself.

They get their assignments and their problems from the ministries to which they are seconded and they perform the legal services those ministries require. However, instead of having all the lawyers in one building, it is convenient to second them out to other locations and other ministries so they are close at hand when their advice is required.

Mr. D. R. Cooke: I gather you have indicated an across-the-board increase of four plus four. Are you in a position to say what is going to happen in 1986?

Hon. Mr. Scott: No.

Mr. Callahan: I have a couple of questions. I notice that we refer to part II of the Provincial Offences Act. At what stage are we with that? Is it to be introduced?

I will tell you why I ask. I have spoken with the administrator in my jurisdiction, and to process a traffic ticket that may have a net return of about $20 it costs in the neighbourhood of $40 to $60 under the present program; that is, a summons being signed by a justice of the peace and so on.

Hon. Mr. Scott: That bill was introduced, and some changes are necessary to part II before it can be proclaimed. The bill that represents those changes was introduced in the first week of December.

You are right. When it is passed, it will involve substantial savings for municipalities, but it has to take its place in Orders and Notices.

Mr. Callahan: I raised that because considerable amounts of money are being shelled out with very little return. It is not necessarily just the municipalities, because there are some that come back to the consolidated revenue fund.

The second point concerns reference to crown attorneys. Mr. Cooke has raised it. I have had some discussions with a few of the crown attorneys in my area and they have indicated that they have never received so much co-operation

from the Ministry of the Attorney General as they have under the present Attorney General, so I feel that accolades should go with criticisms.

Hon. Mr. Scott: I might as well enjoy it while I can.

9:20 p.m.

Mr. Callahan: I also understand that the portion allotted to justice in the past has been about two per cent of the provincial budget and I understand that this year it has been increased to four per cent.

Hon. Mr. Scott: No. The budget of the Attorney General's department is about one per cent. If you set off against that budget recoveries made for the consolidated revenue fund, the net payout to the ministry reduces it to about half of one per cent. Needless to say, though, there must be very great constraint.

Having just come in, I am very proud of the efficiency of an operation that is as widely spread and as diverse as the administration of the justice system, when you bear in mind that the net payout from the provincial budget is half of one per cent for all those services.

I have just one word on the crown attorneys. It is nice to get the compliment, for which I thank whoever gave it to you, and you for passing it on.

Mr. Villeneuve: It was somebody who lost his QC.

Mr. Callahan: No. Actually it was someone without a QC.

Hon. Mr. Scott: The problem is not one to be examined simply in terms of compensation, because there are very few groups in our public service, and perhaps very few groups in the community, who cannot make the complaint that they are finding it difficult to live on the compensation they receive. That is true of teachers and of a wide variety of other occupations.

That is not the problem with the crown attorneys, from my point of view, although it is obviously a feature. My concern is that crown attorneys come into government service upon graduation from law school, are trained to a certain extent by government, develop an expertise and then in very large numbers are lost to the public service when they become most valuable.

In other words, it is not merely that we may be paying less than we should in fairness. It is that we are dissipating an important asset developed at our own expense. These are really the two reasons I give this issue high priority. We lost 30 crown law officers during a couple of years. That is an enormous drain, particularly when you remember that we are losing them not because of retirement or because they are there for a couple of weeks and do not like the work; we are losing them when they are approaching their most productive years, productive not only for themselves but also for the government and for the administration of the system.

Mr. Callahan: You lose them to the other side of the table. They then become the adversaries of their former colleagues.

Hon. Mr. Scott: Yes, but I do not think they do it just because they think defence work is more fun. They do it because the pressures that we all sustain to improve ourselves financially are theirs as well, and they get these opportunities. The simple point I make is not only that they must be dealt with fairly but also that government must begin to protect its interest in an asset it has.

Mr. Callahan: I would like to develop that a little. It seems to me that when you have a crown attorney standing before a judge and, between the two of them, they do not make as much as the defence counsel defending the case, it does create a morale factor. As well, the defence counsel may plead one case and then disappear and play golf or whatever he does afterwards, whereas the crown attorney must proceed to litigate cases right through the day.

That carries me into my second question, the question of what are affectionately called rent-a-crowns, or part-time assistants. As you know, their maximum fee is $175 a day for whatever hours they spend there, and I wonder whether there is any move afoot to do one of two things: either increase their salaries or take the cap off the hours. As you know, federal crown attorneys can make up to $600 a day. There is no cap on the hourly rate, as far as I know. Is there any move afoot to do that?

Hon. Mr. Scott: It is rather odd to find a minister of the crown talking this way, because I suppose I should be emphasizing how tight we are with the buck in the ministry when we are paying people. I should be telling you what a finely tuned institution we run and what savings the public makes because we pay badly. In the case of the crown law officers, the situation is serious.

I know of the case of a young man, an Ontario Provincial Police constable or sergeant, I forget which, who decided to leave the OPP and enter law school. He completed his law program and was lucky enough to get a job in the crown law office. After three or four years there, he was earning less than he had been earning as an OPP constable. Maintaining the kind of sophisticated

force we need in the crown law office is a very serious problem.

I could talk about this for the remaining hours. I will not, but I feel strongly about it. On the subject of rent-a-crowns, as you call them, and we might devise another description, the paring-down of resources for the administration of justice has made the so-called rent-a-crown, who was a relatively unusual fellow when I began to practise, now a standard feature of virtually every crown attorney's office in the field. It is more economical for government to provide service in this way than by hiring more full-time staff. It has its unfortunate features, but the practice is here and we are living with the problems.

There are certain inducements to lawyers in the private sector to be available for crown work. We are not exactly twisting their arms to get them to do it, but we are very grateful for what they do. We are developing some financial proposals to deal with them. In the light of the December 1 increase of 20 per cent in the legal aid tariff, there will very shortly be a review of the method of compensation, which is tied to a certain extent to the legal aid tariff.

Mr. Callahan: If the rates stay as they are, the danger you face is that instead of having senior members of the bar or experienced members of the bar acting in that capacity, you draw in people who are relatively newly admitted to the bar. At times it can be somewhat debilitating, and not simply from their standpoint.

I remember one day in a courtroom when the judge asked the accused how he elected on a charge. The defence counsel turned to me and asked, "What is an election?" I just rolled my eyes and felt great empathy with the accused, who was being defended by counsel who did not know what an election is. We all know what an election is in more than one term.

9:30 p.m.

Hon. Mr. Scott: I have every sympathy for the rent-a-crowns who do an excellent job for us by and large. I believe they should be compensated fairly, but they at least have the opportunity to supplement their income in their private practice where, subject to their abilities, they can and do earn other income. The crown law officers do not have that opportunity.

I hope we will never have to make a choice about where we put our dollars, but if we did, the most critical problem we confront in times of very severe constraint is getting the best kind of manpower. Unless you are in there, it is very difficult to realize how critical the staff of the crown law office is to the administration of justice. Every one of those courts running day in and day out is staffed by a crown law officer who not only exercises his ability to make the legal judgements about a matter but also exercises very significant discretionary powers. You simply cannot plan an effective administration of justice unless you have the best people you can get doing that.

Mr. Callahan: I concur. Those are my questions. Thank you.

Mr. Chairman: Mr. Partington?

Mr. Partington: Mr. Callahan asked my question.

Mr. Chairman: Did he ask it as well as you would?

Mr. Partington: I think so.

Hon. Mr. Scott: Would you like me to answer it again, Mr. Partington? I feel strongly about it.

Mr. Partington: I feel very strongly about it too.

Hon. Mr. Scott: I know you do.

Mr. D. R. Cooke: I have a question for Mr. Callahan. If the Peel crown attorneys have now found the Attorney General's office more co-operative than in the past, are they any more co-operative with the citizenry than they used to be?

Mr. Callahan: I did not say the Peel crowns. I would not touch that question with a 10-foot pole–simply because I had hoped to preserve this copy of Hansard.

Ms. Gigantes: As a lay person looking at the legal system, I would like to understand this. There seems to be a potential for conflict of interest when a person is normally self-employed as a defence lawyer and then on occasion is called upon to assume the role of crown prosecutor.

Hon. Mr. Scott: There is no conflict of interest at all. There is what you might call a potential but actually nonexistent conflict of duty. The duty of a lawyer is to present his case for his client. In succeeding cases, lawyers often have duties that are inconsistent with duties they have performed in other cases.

In my practice, for example, I may find that my duty is to present a case for a development company in which I find myself opposed by some ratepayers. A year and a half later, I may be retained by that ratepayers' organization to deal with another case they have. I have one duty that is discharged to each of those clients. There is no conflict at all in that situation. As a professional, I have no interest in the client I represent.

Mr. Callahan: Perhaps Ms. Gigantes is thinking of a case in which a part-time crown attorney, one who is on a per diem, may have represented the defendant now appearing before the court. In that case, the attorney's duty is clear: He cannot prosecute, and he would withdraw from the case.

Hon. Mr. Scott: It would be prudent to do that, just to deal with appearances. However, let us not begin to think that this is a conflict of interest, because it is not. Every practising lawyer has had a case where he finds ranged against him, among the clients on the other side, a person he has acted for in the past. It would be wrong to act in that second case if you have any information from the first case that is relevant. Aside from that, there is no conflict of interest in that situation.

Mr. Chairman: Ms. Gigantes, did you wish to pursue that further?

Ms. Gigantes: I thought we might have another comment or two.

Mr. Chairman: You were hoping.

Hon. Mr. Scott: She was surmising.

Mr. Chairman: You had an anticipatory look on your face.

Ms. Gigantes: If I may, I would like to report to the committee that Mr. McClellan has suffered a second death in his family. That is why he is absent tonight.

Hon. Mr. Scott: It depends on how long these estimates go, but if you want to reserve half an hour of the estimates time to be dealt with between the women's directorate and Indian affairs–I would not like to do that, but let us just leave it.

Ms. Gigantes: I would very much appreciate that, and I know he would too.

Mr. Chairman: Depending on circumstances, we may well be able to deal with it on Tuesday.

Clerk of the Committee: You do have about an hour on Tuesday.

Ms. Gigantes: Thank you.

Mr. Chairman: Ms. Gigantes, with respect to this item, there was agreement by the committee when you were out of the room that we would dispose of it with the clear understanding that in so doing we would have unanimous approval to reopen it for Mr. McClellan when he would be able to be present before the committee. With that understanding, we can proceed with vote 1604.

On vote 1604, crown legal services program:

Ms. Gigantes: I have one other area of questioning; it is on vote 1604, item 2.3, on page 61. I wonder whether the minister can bring us up to date in this general area of constitutional questions as to when we might expect a decision from the Court of Appeal on Bill 30 and how long it might take to get a judgement from the Supreme Court following that, depending on the decision.

Hon. Mr. Scott: I do not know the answer to the first question, although the press has speculated that it would be early in the new year. I have no information from the court at all. I would not normally get any. I cannot predict when the decision is likely to be given.

The question of how long an appeal to the Supreme Court of Canada would take depends on whether the case would be given any priority by the Supreme Court itself. If no particular priority is given to it–Mr. Wright is here and his estimate is probably better than mine–I would think a year and a half would be the time frame. Mr. Wright nods assent.

If some priority were given, some months might be cut off that. The real time difficulty is not only getting the case heard but also getting it decided. We have no way of predicting how long the Supreme Court of Canada will take to decide a given case after the argument is completed.

Ms. Gigantes: That is very helpful.

Mr. Chairman: Can the committee now deal with vote 1604, inclusive of all items, with the understanding I noted earlier?

Vote 1604 agreed to.

On vote 1605, legislative counsel services program:

Hon. Mr. Scott: Mr. Stone, everybody's favourite public servant, is here.

Mr. Chairman: Welcome, Mr. Stone. We are pleased to have you here.

Ms. Gigantes: I do not know whether this is an appropriate place to ask this question, but I wonder whether there are plans in the ministry for the translation of legislation that has been passed.

Hon. Mr. Scott: Yes, there are. Mr. Stone can give details of what has been done. I suppose I have to give the details of what the plans are.

Mr. Stone will tell you that probably somewhere between 30 and 40 per cent of the statutes already have been translated into French. To the burden of his office, we are increasingly producing bills, such as the Family Law Reform Act, that are presented to the House in both languages. Bearing in mind the present staff, that

burden detracts from the capacity to pursue translation.

At one time we had hoped it might be possible to complete the translation of the statutes, assuming not many more in English only were added, by 1990. I do not think we have given up on that as an objective, but it is likely there will have to be substantial resources allocated beginning almost immediately if anything like that timetable is to be met. Mr. Stone can perhaps comment on that.

Ms. Gigantes: Is that what you are planning to do?

Hon. Mr. Scott: Which is what we are planning to do?

Ms. Gigantes: To add substantially to the resources?

Hon. Mr. Scott: I cannot tell you that. Do you want to add anything, Mr. Stone?

Mr. Stone: Very little. One of the difficulties with the production of translations is that the idea seems to be so popular we keep getting new jobs with the same staff. The Attorney General mentioned bills. Another large item is that the ministries also want all the forms they use in field offices and with the public available in bilingual form for certain areas of the province. This means we spend a lot of our time on forms; that involves doing the basic work of translating the regulation under which the form is issued because the terminology is established in the form which will be used in translating a regulation some time.

9:40 p.m.

Ms. Gigantes: That is done through this ministry rather than through individual ministries?

Mr. Stone: Most of the forms are prescribed by regulation, which makes them law.

Ms. Gigantes: Yes.

Hon. Mr. Scott: Mr. Stone, it need hardly be said, is in a very special way a servant of the assembly rather than a servant of the ministry. However, for budgetary purposes he reports through my ministry.

Ms. Gigantes: I would have thought the legislative branches of the ministries could do their own forms.

Hon. Mr. Scott: When I came here, I thought the ministries themselves drafted their own acts, but they do not. Mr. Stone has that obligation. Of course, he has the other obligation of providing services to private members and other parties to do drafting. I hope it is not inappropriate to point out the services he provides. I am sure all members agree they have been of extraordinarily high quality.

Ms. Gigantes: What if there were requests from parties to have translators become members of staff of parties? For example, I have talked to people in the New Democratic Party who have been very interested in having a person on staff as a translator with a high level of capability, provided by the assembly, because none of us likes to use up the resources already allocated to hire translation services. Would that come through this ministry?

Hon. Mr. Scott: It would be provided by the Board of Internal Economy.

Ms. Gigantes: It would be a different allocation.

Hon. Mr. Scott: Not necessarily, but I take it they would allocate the funds. Then the question would be from which ministry or agency those services would, in effect, be notionally purchased. I would presume it might be convenient to notionally purchase them from Mr. Stone's office.

In other words, if the Board of Internal Economy decided that was the right thing to do, an allocation would have to be developed because it would cost money. I would presume Mr. Stone's office might be asked to take over those funds and provide the service. However, he might not be able to do it.

One of the problems is that the staff required are highly skilled. Mr. Stone will tell you it is not easy to get them. There is another problem; the office of legislative counsel, while a servant of the assembly and its members and providing services to ministries, is not a political office.

I leave it to Mr. Stone to deal with the case when it comes up, but it would reduce the effectiveness of his office and its appearance if it were involved in work for us or you that was closely political. If the work were of a political nature, the Board of Internal Economy would probably say: "Here is the money; you buy that service yourselves."

Ms. Gigantes: Is it intended that the freedom of information and protection of privacy bill be presented in bilingual form?

Hon. Mr. Scott: I cannot answer that question. I do not know that we have made a request to have it translated. It has not been introduced in bilingual form. If it were decided to introduce it in bilingual form, then there is a procedure about which the Clerk of the House

has told me whereby you withdraw the original bill and then introduce it again.

Ms. Gigantes: That was done with the Family Law Reform Act.

Hon. Mr. Scott: Yes. That would have to be done. However, to do that now would involve a substantial delay in the passage of the bill. First of all, we would have to have it translated. Because of its complexity and the difficulty of its language, even in English, that would be a major assignment. Then it would have to be withdrawn, which would mean there would be no point in proceeding to second reading.

Ms. Gigantes: Could I then make the suggestion that it be given some priority for translation once it is passed in the English form?

Hon. Mr. Scott: May I consider that request? Let me tell you why. That was the first bill introduced by this government; it was introduced within 10 days or two weeks of the Premier (Mr. Peterson) being sworn in. Without putting aside many of his other tasks, I very much doubt that Mr. Stone could have arranged for translation in that time, although it is conceivable; the miracles that can be worked can be documented.

Since that time, in so far as Mr. Stone's facilities of law are able, we have made a conscientious effort to introduce all ministry bills in French. I think that is a good policy. The francophone members of the House should have the opportunity to debate the bill in either official language with a text that is of equal authority. I would not want that process to be stopped to translate a bill that has already been introduced. I am not sure I would want it to be stopped even for the translation of the remaining statutes.

Ms. Gigantes: I did not intend to suggest that. What I intended to suggest was that because of the nature of the legislation, it is very important to have it translated as soon as possible once it is passed, if it is to be used by francophone residents of Ontario.

Mr. Partington: What is covered by or included in the services item in the chart on page 67?

Mr. Stone: I believe that item includes printing costs, principally for the French translations.

Mr. Callahan: Mr. Stone, in this day of modern technology is there any move afoot to move the Revised Statutes of Ontario from a 10-year cycle to a five-year cycle? One would think that with computer processes available, you could plug the amendments quite effectively into the initial statute that is in the computer or word processor.

It is far easier for practitioners and any other body that employs the Revised Statutes of Ontario to refer to them in their amended fashion than to consult the one or two volumes of amendments put out each year and then relate them all to the Revised Statutes of Ontario for the previous 10-year period.

9:50 p.m.

Mr. Stone: Yes. As Mr. Callahan has said, we do have such a system. The statutes are maintained in updates on computer tape for printing. Therefore, mechanically it would be very feasible to print them any time. As to the decision to publish, that is a government decision and one that has to be financed.

Mr. Callahan: One would think, with the charges made for the Revised Statutes of Ontario each 10-year period, that the cost paid by the profession would meet the cost of this program if you already have it in place. It would be of significant assistance to the profession, I would think.

Hon. Mr. Scott: It might be of significant assistance. There are obviously offsetting items, because people purchase the RSOs.

Think of all the RSOs that are out there in government offices, and all kinds of other offices, which are paid for by the taxpayer. If you had revisions more often than every 10 years, the entire replacement of the series would have to occur more often; say every five years. There would be an extraordinary expense in doing that.

If there were a revision in 1985, you would obviously have to replace all the copies of the 1980 revision that are out there because no one would be working from them any more.

Mr. Callahan: In essence, you are doing that individually by–

Hon. Mr. Scott: No, you are adding one volume a year.

Mr. Callahan: But you are doing that individually every time you print an act in its amended fashion. You are producing that through the bookstore, in any event.

Hon. Mr. Scott: Yes.

Mr. Callahan: I am trying to think about this. A 10-year consolidation of the RSOs is something that has been with us since, I suppose, Confederation or thereafter. In this day and age of technology, it would be nice if we had the ability to produce, even in a looseleaf fashion, a currently updated set of statutes, all statutes, for practitioners, people in government service, and

so on. This would enable us to avoid the possibilities, which have happened, of matters being overlooked by judges, by solicitors–

Hon. Mr. Scott: If you made a change in the Registry Act, it would be technically feasible to reprint the volumes of the RSOs incorporating that change. It would be, I take it, just a printout. You could reprint the whole thing with the change that was incorporated in the Registry Act. You could do that physically, I presume, every time a change was made to an act, or at five-year, 10-year or two-year intervals.

Mr. Callahan: I am not suggesting that all the volumes be reprinted.

Hon. Mr. Scott: Which volumes are you suggesting?

Mr. Callahan: I am suggesting that, instead of their being bound as they are now, there be a looseleaf version. You would receive a new page each time an act was amended; you would just dispose of the page where the amendment was and put in the new page. That way you would have a consistently updated program. I do not believe this kind of service is available to the profession or to anyone else.

Hon. Mr. Scott: I must candidly confess that I have not been to the law library for a while to look up a statute. In the way I used to do it, however, you would get the revision and find the statute you want. Then you would go to a citator, in which you could tell, by looking at one page, whether there had been any changes made, and what those changes were, in heavy black print. That is a looseleaf volume. That brings you up to date.

Mr. Callahan: I do not want to belabour the point, but it seems to me that, particularly–

Hon. Mr. Scott: Belabour it if it is a good point. We have only four hours left.

Mr. Callahan: –if you are in a courtroom, if you have five amendments that have been passed, you have five of those red books, you have the RSO and you have the statutes citator.

Hon. Mr. Scott: You have too many books to begin with.

Mr. Callahan: Lawyers need that many.

Hon. Mr. Scott: No, no.

Mr. Callahan: If you are going to be able to accurately pinpoint the amendment that has been made, in the way that present portions stand, you are going to need those books, unless you reproduce them yourself and type in the amendments.

Hon. Mr. Scott: It seems to me, Mr. Callahan, you get out the 1980 Revised Statutes of Ontario, and then the Ontario Statutes Citator, which will show any changes in the Registry Act. Unless it is pages and pages, it will be on one looseleaf page; you photocopy that, and go into court with the RSOs and the photocopied section from the citator. If there have been a lot of changes or a new act, it might be easier to buy the consolidation.

The problem is that if a revision is referred to frequently, every practitioner and judge is going to work from the latest revision and everyone will have to buy the revision. It will be impossible to carry on without the revision because the judges will insist that all citations be based on the 1990 revision. Every practitioner in the province will be put to the expense of buying the six or seven volumes, and every government office and many business offices will be required to have it provided or buy it themselves. I am thinking of moving to a 20-year revision.

Mr. Callahan: They are already paying for it in the sense of buying the citator and the fact it has to be updated with looseleaf pages. So save one step. Instead of offering the terms of the citator, where three sources have to be gone through to arrive at the proper statute, use the technology, if we have it, to send it out in a single looseleaf binder.

Mr. Stone: To some extent the need is relieved by the use of the computer tape, as Mr. Callahan suggested, in that there is a lot of activity in putting out office consolidations. Some 400 of 600 statutes are maintained in office consolidations. These are put out by the ministries on the grounds that there is public need for them. We print it at least once a year, sometimes twice.

That is probably not as thorough or as good as a looseleaf, but a looseleaf has certain limitations, too. It does not do away with also having to maintain the original in a bound copy. It does not give the text of the amendment the Legislature passed so that one can judge for oneself what it said. It drops off a lot of the transitional provisions, special provisions, things like that. They are very hard to carry forward and they apply only to an amendment comprised wholly in the statute itself.

The other thing lost if hardbound covers are not kept is the legislative history, because a law speaks only today. So it does not really replace it. After that, it is cost-benefit analysis. Many provinces have them and they all seem to like them, but they are pretty costly to produce.

Mr. Callahan: Do many provinces have the looseleaf?

Mr. Stone: Yes.

Mr. Chairman: Is there an estimate of costs were the Legislature to decide to do a complete and total translation?

Hon. Mr. Scott: I had occasion to ask. In order to complete the translation of the existing statutes that are enacted up to today–I think I have this correct, and Mr. Stone may be able to help me–and to maintain the regular work of the office of legislative counsel at its present pace, that is, no more demands–

Mr. Chairman: Of a nonpolitical nature.

Hon. Mr. Scott: –of a nonpolitical nature for translation before introduction of bills than we have now from private members, the budget would require a rough estimate of an additional $500,000 a year.

Ms. Gigantes: Until?

Hon. Mr. Scott: Until 1992 or whenever. Correct, Mr. Stone?

Mr. Stone: I think, in so far as it can be estimated this far ahead, that is as close as you could come.

Vote 1605 agreed to.

10 p.m.

On vote 1606, courts administration program:

Items 1 to 3, inclusive, agreed to.

On item 4, provincial courts (civil division):

Mr. Callahan: The Attorney General has started a project in York and in a couple of other jurisdictions with an increased jurisdiction for the small claims court. Is that program, now that it has gone through an extensive pilot project, to be carried forth into the other small claims courts? That is the first part of my question.

Hon. Mr. Scott: Yes, that is our present intention. We know it will involve a considerable expenditure because the estimate is that the increase of the limit to $3,000 initially–and there are some people here with more knowledge than I have–produces an increase in work of about 35 per cent or so, which reduces slightly in the second and succeeding years and then plateaus.

You are substantially increasing the work of those courts and it will require more judges, more space and so on across Ontario. A ball-park figure of the cost to implement it across Ontario is about $3 million. It is simply a question of finding or timing the funds.

Ms. Gigantes: Is there no saving of the facilities that–

Hon. Mr. Scott: The basic problem is that the work that would be assigned to the small claims court is work that is either not done–because the cases are not brought, a small category–or is work now done by the district court. The judges of the district court are appointed not by us but by the federal government. It would be impossible to reduce the number of judges in the district court, even if it were justified, without federal intervention. As their space is in place, there is not much that can be done about it.

Ms. Gigantes: Do you need a special space to have a small claims court?

Hon. Mr. Scott: You have to have a courtroom and a clerk's office.

Ms. Gigantes: If there are cases that are not being heard in district courts because they are small claims actions, could you not use the district courtroom?

Hon. Mr. Scott: It may or may not be convenient. In the first place, the thing you learn is that we are short of courtroom space all over Ontario in virtually every court. The district court in Toronto, a very heavily worked court, is asking for more space than it now has. Mr. Carter, who is now here, and who hides by day, is in charge of providing this space for this insatiable maw.

Ms. Gigantes: Does the small claims court hear cases after normal work hours?

Hon. Mr. Scott: I do not know, but I think not.

Mr. Callahan: They sit considerably longer, because I know I sat in it part-time.

Hon. Mr. Scott: I think it is a day court, unlike the provincial court, criminal division, which maintains night hours and the odd justice of the peace court that also maintains night hours.

Mr. Callahan: My second question refers to the $3-million figure. As you know, at one time the court was serviced by a federally appointed judge. It was only with the introduction of the civil side of the provincial court that provincial court judges were put in there.

Is there any type of allocation between the federal government and the provincial government, or is there the possibility that the cost could be shared? If you increase the jurisdiction and take the pressure off the district courts, you perhaps save them from having to appoint more district court judges immediately. Is that an avenue that might be explored? It is really a rhetorical question; I do not expect an answer to it.

Hon. Mr. Scott: The Deputy Attorney General, who is, among other things, the historian of the department, will be able to deal with that.

Mr. Campbell: It is a very rationally compelling solution, but I am not sure it would work in the court system as it exists. It is difficult to prove that if you add more small claims court work you will perhaps take away some county court jurisdiction. It would be difficult to argue with any degree of force that would convince the federal government that one fewer county court judge would be needed.

Ms. Gigantes: Can we not measure the number of cases? Is it between 1,000 and 3,000?

Mr. Campbell: You can measure the number of cases, but you do not know how many people not going to court now would go to court.

Ms. Gigantes: I understand.

Mr. Campbell: It is also very difficult to look at judicial work load. You can measure it by the number of cases, by the degree of courtroom utilization, if I can use that term, or by the complexity of the cases. Even when you put all those figures together, it would be very difficult to convince the federal government or the existing county court that we could do without a county court judge in a county simply because we expanded the jurisdiction of the small claims court.

Mr. Callahan: Maybe you could use the carrot of giving it back to them.

Hon. Mr. Scott: If the district court has an existing backlog, as most of our courts do, it would be very difficult to explain the withdrawal of one judge. If the backlog of cases in your county is such that the district court is setting dates six or eight months ahead, it would create something of an outcry if the federal government were to take one month's work off the district court load, saying, "Now we are only seven months behind in our work load so we will withdraw one judge."

Mr. Callahan: That is actually very generous because we would like to have only a six-month backlog; it is probably a year or two. I have had people tried by a higher court before they were tried by the other court.

I sent you a letter on the question of whether there has been any consideration given to increasing the jurisdiction for an undisputed claim, in other words, in a default judgement situation or after an assessment of damages. Many litigants are being denied justice. For many of them it is not worth pursuing a $3,000 claim or even a $10,000 claim in district court because of the compensation for costs and perhaps their ability to recover on a judgement.

Hon. Mr. Scott: Are you talking about a case in which there is no defence or a case in which there is no defence as to liability only?

Mr. Callahan: Either one; either a case on a liquidated claim where there is no defence and a default judgement is signed–

Hon. Mr. Scott: Let us deal with each of them. If there is no defence at all in a case, no defence is filed or no appearance entered–maybe there are not even appearances any more–I presume a judgement can be obtained reasonably rapidly.

10:10 p.m.

Mr. Callahan: If it is in the neighbourhood of $3,000 to $5,000, there is the likelihood of the litigant launching an action in the district court on the possibility there may be a defence. However, I suggest that if the jurisdiction of the small claims court was enlarged to allow a litigant to file an undefended claim, judgement would be signed in that court. If it were defended, then there would be a transfer of jurisdiction back to the district court.

Hon. Mr. Scott: I do not understand the practical point of that at the moment. If the plaintiff decides to commence his action–we all hope they will not be defended–he commences it now in the district court. If it is not defended, he gets reasonably speedy judgement. I do not know how many weeks it would be, but he would get judgement in a matter of weeks.

Mr. Callahan: However, the plaintiff still has to have a lawyer draw the papers within the framework of the rules, whereas small claims court has a much less onerous procedure that can be done by an individual himself.

Hon. Mr. Scott: Would you permit them to do the pleadings over when they went to the district court?

Mr. Callahan: There may be provision for that. If a defence was filed, there would be a re-doing of the pleadings. It seems that the tenor of all the things we have been doing is an attempt to prevent a citizen of Ontario from having to resort to a lawyer and the costs involved in cases where it is unnecessary.

Hon. Mr. Scott: I do not accept that. I would have thought the thrust of our reform was not to provide systems in which lawyers will be unnecessary. History has shown us that is either impossible or unlikely to occur in any event.

Rather, our thrust has to be to see to it that people who need lawyers gain access to them at reasonable cost and promptly. If that kind of system is in place, then you commence your action in the appropriate court. If it is not defended, you will get judgement within a matter of weeks. If it is defended, it will then go on to trial.

Mr. Callahan: Could I deal with the second part of that? In the case of an assessment of damages, surely a civil small claims court judge could deal with a small assessment item of $10,000 as acceptably as a district court judge.

Hon. Mr. Scott: Acceptable to whom? The plaintiff?

Mr. Callahan: It could be a situation where, if the plaintiff decided he did not wish to have that court hear the case, he had the right to move it to a higher court. It would filter some of the assessments into the lower courts.

I am just trying to think of a way of getting the work load off the district court. Ten years ago, $10,000 was a significant sum of money. Today, compared with some of the awards and claims made in courts, it is not that significant.

Hon. Mr. Scott: I had not thought about that. I will certainly consider it. My general instinct is that the way you save money and time and achieve speed is to reduce the time between the commencement of the proceeding and the trial.

Any system that introduces interlocutory proceedings as they used to be called–they are called something else now; we lawyers are great at changing the name without altering the substance–or that creates more motions either to move cases up one court level or down another is a time-consuming, expense-riddled exercise. Some rationalization of the court system obviously has to be undertaken.

However, it seems to me that the key feature is to provide citizens with economical access to appropriate legal advice when they need it, then devise a system in which the time lag between the commencement of the process and its readiness for trial is small. The smaller the time, the cheaper the exercise. Lastly, we should ensure that the time lag between readiness for trial and actual trial is as short as possible. That is a function of the number of judges and the number of courts.

I am grateful for these ideas because there is room for rationalization.

Mr. Chairman: Ms. Gigantes still has the floor. Mr. Partington, is your question supplementary to Ms. Gigantes's original question?

Mr. Partington: My memory does not go back that far.

Ms. Gigantes: Is there any estimate of how many of the people who appear in small claims court use lawyers? Are records kept on that?

Hon. Mr. Scott: Is Mr. McFarland able to help us on that?

Ms. Gigantes: A rough percentage?

Mr. Chairman: Could you come forward, sir, for the purposes of Hansard.

Hon. Mr. Scott: Mr. McFarland is the director of small claims courts.

Mr. McFarland: It varies throughout the province. In Metropolitan Toronto, approximately 40 per cent of the claims between $1,000 and $3,000 are filed and defended by lawyers. I would estimate that about 20 per cent or less of the claims under $1,000 are defended by lawyers.

Ms. Gigantes: So small claims courts do not necessarily cut out lawyers.

Hon. Mr. Scott: No, but as you have heard, a substantial number are heard without lawyers.

Ms. Gigantes: Yes, but they are smaller claims.

Hon. Mr. Scott: Yes.

Ms. Gigantes: My second question concerns the rough estimate you gave us of the cost of expanding the system so that claims up to $3,000 would be heard all over the province. How much of that cost would be attributable to manpower costs and how much would be facility and service costs?

Hon. Mr. Scott: Mr. Carter, have you any guess or estimate?

Mr. Carter: My estimate would be that at least 75 per cent would be manpower.

Ms. Gigantes: Thank you very much.

Mr. Partington: With the expansion of the system throughout Ontario, will the intent be to use district court judges to hear small claims court, or will you have a new level of judiciary, being, I guess, small claims court judges.

Hon. Mr. Scott: It would not be our intention to use district court judges.

Mr. Partington: As county court judges once were used?

Hon. Mr. Scott: No.

Mr. Partington: When was this system, with a limit of $3,000, first introduced in Toronto?

Hon. Mr. Scott: Do you remember, Mr. Carter or Mr. McFarland?

Mr. McFarland: It was in 1980.

Mr. Partington: Do you have a deadline when this jurisdiction will be extended throughout Ontario?

Hon. Mr. Scott: The Treasurer (Mr. Nixon) will be able to help you on that. It is a project we would like to undertake. There is considerable pressure from the courts themselves and there is pressure from consumer groups and others. It is one of our budgetary items.

Mr. Partington: It seems that there are almost two levels of justice now, one for Toronto and one for the rest of the province. I have experienced the unfairness outside Toronto of the public not having the availability of this reasonably efficient, low-cost delivery system.

Hon. Mr. Scott: I have a brother who practices in Ottawa. He sounds very much like Niagara Peninsula lawyers, because he constantly complains about the way the justice system is Toronto-oriented. Is that the point you are trying to make?

Mr. Partington: I am making the point on this specific court.

Hon. Mr. Scott: I hear it all the time. There is nothing in it. Remember that we are a department with a net half a per cent of the provincial budget. In dollar terms, we are a very small ministry in allocation.

When one introduces a project like this, with major financial ramifications, it is important and useful to have a pilot project. It is easy to say, "We will go to $3,000 in the small claims court." We do not know what that means in terms of increased claims or utilization of space or manpower.

A ministry that has a relatively modest administrative allocation is prudent to try it out and see what it is going to cost if applied across the province.

The next thing we try out, we will try out in the Niagara Peninsula.

10:20 p.m.

Mr. Partington: With the new courthouse down there, the space is available.

Mr. Chairman: Could I ask a question along the same lines? If at some time the outlined jurisdictions are increased to $3,000, with respect to the small claims court, would it be the intent also to increase Toronto? Will there always be a gap or will Toronto remain at that level?

Hon. Mr. Scott: It is not intended that there should be a gap. Sarnia is going to be last.

Mr. Chairman: That has always been the case, and I would expect you to be consistent.

Hon. Mr. Scott: Even under the previous government?

Mr. Chairman: No, just in the last few months.

Ms. Gigantes: Has there been an evaluation of this pilot project?

Hon. Mr. Scott: There has been an evaluation, as Mr. Carter can tell you, in the sense that we know something now about what the professionals call the uptake and about the costs of implementing it.

Ms. Gigantes: What is the uptake?

Hon. Mr. Scott: Do I have it right, Mr. McFarland? I said between 30 and 40 per cent in the first year.

Mr. McFarland: Yes.

Hon. Mr. Scott: Then it levelled off a bit, did it not?

Mr. McFarland: Yes. We estimated 6,000 additional claims. In the first full year, we had 16,000 more.

Mr. Chairman: This question may have been asked, but I want to pursue something for a moment. How long ago was $1,000 instituted as the level for small claims court? What year was that?

Mr. McFarland: It was 1977.

Mr. Chairman: Is it not therefore appropriate to look at something realistic in terms of the inflationary erosion of that amount? I do not know whether it is a $3,000 figure today, but surely there should be some relationship between inflation and the appropriateness of an amount, what it should be in 1986, if it was correct in 1977.

Hon. Mr. Scott: So there should be. That is why we are going to $3,000. The argument could be made that we should go to $5,000 or to $2,000.

Behind the facetious exchange Mr. Partington and I have been having is a very important point that Mr. McFarland has indicated. A survey of consumer groups and users of the courts was done when we decided to go to $3,000. On the basis of that survey, we estimated that the uptake, the increase, would be 6,000 cases. It turned out that the uptake was 16,000.

You can imagine what would have happened if we had gone province-wide on the assumption of 6,000 and had tripled it in reality. We would have presented a budgetary item that was one third of what was necessary. That illustrates, if anything,

the prudence of my Progressive Conservative predecessor in suggesting that we should proceed by pilot project until we got some sense of the ramifications.

Ms. Gigantes: What level did the increase assume after the first year? Was it close to 6,000?

Mr. McFarland: It went to 16,000 in the first full year. It has levelled off to about 15,000 now.

Hon. Mr. Scott: The point is that the estimate of what it would go to was 6,000.

Ms. Gigantes: So it has just maintained that increased level, basically.

Hon. Mr. Scott: Yes, it has levelled off a little.

Ms. Gigantes: I had the impression from what you said that it had dropped right back, that there had been some big backlog that had washed through the system.

Hon. Mr. Scott: No.

Mr. Partington: When the act of extending the jurisdiction–outside Toronto, again–is determined, is it likely that it will be done in one step across the province, or will you take other areas that you have determined might readily adapt to its status?

Hon. Mr. Scott: That will, again, be a financial question for the government as a whole. One would prefer to do it across the province, but it may not in any fiscal year be possible to do that. That decision has not been made.

Ms. Gigantes: In the last year of the $1,000 limit, what was the level of cases?

Mr. McFarland: In Metropolitan Toronto, it was 32,000 for the four courts, approximately, if I remember rightly.

Ms. Gigantes: But you were talking about 16,000 in the city of Toronto.

Hon. Mr. Scott: There are four courts in Metro Toronto. Do I understand you to say, Mr. McFarland, that in the last year before the change there would have been 32,000 cases coming to Metro Toronto? It was increased by 16,000, a one-third increase.

Mr. Callahan: I acted for about three years as a part-time small claims court judge. In any one day we were handling perhaps eight to 10 defended cases. We used to sit until 6 p.m. Those were not the ones that were settled, because they were not sure they were going to be reached.

Hon. Mr. Scott: Or the ones that were settled because they heard you were the judge.

Mr. Callahan: Either that, or I suggested they go out and talk about it while we handled the other cases. These courts handle a significant number of cases and are an excellent vehicle for taking the pressure off the district courts and the Supreme Court.

Ms. Gigantes: Maybe we should get him to make the pitch to Crosbie.

I have questions I want to raise under items 2 and 3. We have not passed those.

Mr. Chairman: Yes, we passed items 2 and 3. We are at item 4.

Ms. Gigantes: I beg the committee's indulgence to ask one set of questions on item 3 at our next sitting.

Mr. Chairman: We have to have unanimous consent of the committee to reopen an item already debated and passed. However, I do not know, if you were to smile, they might go along with that. What is the wish of the committee? Can we reopen item 3? I am getting slight nods, not a great deal of enthusiasm, Ms. Gigantes. I want you to know that. I am interpreting the movements of the committee as I see them.

Mr. Callahan: You owe us one.

Mr. Chairman: I am sure they will remind you of that. Time having expired, the chair will take it that we have voted and passed items 1 and 2 of vote 1606, and although we passed item 3 we will reopen it. We shall leave item 3 on for when we carry on. Does that meet with your approval?

Ms. Gigantes: My humble thanks.

Hon. Mr. Scott: Would you like to tell me, either now or later, the nature of your question so I will not need to bring everybody back.

Ms. Gigantes: Sure. I would like to learn a bit about the fascinating history and consequences of all the investigations and events surrounding the sheriff of York's office over the last–

Hon. Mr. Scott: I think that is the wrong item, is it not?

Ms. Gigantes: I noticed there was an item in there for the computerization of the sheriff of York's office. Lacking any other handle, I did not–

Mr. Callahan: One byte or two bytes?

Hon. Mr. Scott: We can deal with it under this item. That is very helpful. Thank you very much.

The committee adjourned at 10:28 p.m.

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Estimates, Ministry of the Attorney General

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, January 21, 1986

The committee met at 3:26 p.m. in committee room 1.

ESTIMATES, MINISTRY OF THE ATTORNEY GENERAL
(continued)

Mr. Chairman: Members of the committee, perhaps we can get started. I want one further agreement from the committee, if I could, before we proceed. Immediately following this discussion on the scheduling, we did agree to reopen vote 1604.

Mr. McClellan, could I have your attention for a brief moment? Was it vote 1604? We agreed to reopen that so Mr. McClellan could make his comments relative to that particular item, even though we have voted on it. We decided to close it off but reopen it for discussion purposes because he has some questions or comments to make.

We will proceed in that fashion with the concurrence of the committee. Before we get to the balance of the estimates, we will be scheduling Mr. McClellan on the reopened vote 1604. If I have a nodded agreement that will be sufficient.

The committee moved to other business at 3:27 p.m.

3:55 p.m.

On vote 1604, crown legal services program:

Mr. McClellan: Thank you, Mr. Chairman. I want to thank the members of the committee for their kindness in reopening the vote on the crown attorney's office and allowing me to raise my question to the Attorney General (Mr. Scott). I promise not to abuse the committee's hospitality, but I need to set out a little background for my question.

I remember a warm, late summer night in August or early September 1971, and I am going entirely from memory, when I went to attend a meeting of the Stop Spadina Committee at a house on Huron Street, which shared office space with the Praxis Corp., a social action group with which I was also associated. I discovered on the evening of this meeting that the offices in the building had been the victims of arson and that records of the Praxis Corp., principally its mailing lists, had been stolen.

Here we are 15 years later raising the question of prosecution for this crime in the standing committee on administration of justice of the Ontario Legislature because no charges have been laid.

I am raising the question with respect to a series of letters from Mr. Paul Copeland, who is acting for the former principals of the Praxis Corp., to the Attorney General, some correspondence from the Attorney General back to Mr. Copeland and some correspondence from myself to the Attorney General.

I refer first to a letter dated July 3, 1985 to the Attorney General from Mr. Copeland. I will anonymize some of the names for obvious reasons but I wanted the opportunity to put some of the concerns on the record.

Mr. Copeland writes to the Attorney General as follows, and I am quoting selectively–

Hon. Mr. Scott: Leaving out the first paragraph.

Mr. McClellan: I am leaving out the belated congratulations and I will also leave out your response to his congratulations.

Hon. Mr. Scott: I hope you read our response.

Mr. McClellan: I thought you might want me to but I shall not.

"Last week," Mr. Copeland writes, "the Ontario Court of Appeal handed down its decision on the application by X to quash the subpoena issued to him to testify in the Howard Buchbinder-initiated pre-inquiry. I expect you remember that Professor Buchbinder has been seeking since 1980 to prosecute four unnamed members of the Royal Canadian Mounted Police in relation to possession of the stolen Praxis documents.

"Mr. X was a senior member of the RCMP and was involved an investigation on behalf of the RCMP in relation to the Praxis documents. In 1977, shortly after the documents were returned to Praxis, Superintendent X told me that the manner in which the RCMP received the documents was questionable. He said that two junior members of the force had received a call indicating that the stolen documents were available if the RCMP wanted them.

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"They checked with two senior officers and were told to pick up the documents. They went out and picked up the documents and brought them back and delivered them to the two senior officers. All four officers were aware of the stolen nature of the documents when they were received.

"Initially, before the Justice of the Peace, counsel for Mr. X argued that he should not be required to potentially incriminate himself by testifying in the case. In the Court of Appeal the argument was raised that it was improper to use pre-inquiry for investigative purpose of ascertaining the names of potential offenders. It was on this basis that the Court of Appeal allowed the appeal and quashed the subpoena."

I will skip a couple of paragraphs in the interests of brevity.

"For the purposes of allowing the pre-inquiry to go ahead and in order that a Justice of the Peace might ultimately make a decision as to whether or not it is appropriate to charge these particular police officers, I would ask you to instruct the counsel in your ministry to provide me with the names of the four officers concerned. I would submit to you that the right of private prosecution should not be allowed to be frustrated by the RCMP refusal to hand over the names and that representatives of your ministry should not act in a manner to similarly frustrate the pre-inquiry process."

The Attorney General replied to Mr. Copeland on September 6 thanking him profusely for his messages of congratulations.

Hon. Mr. Scott: You are not going to read it.

Mr. McClellan: I am not going to read it. But he did say–

Interjection.

Mr. McClellan: Words fail me. He writes in a very business-like manner. "I have asked to have the substantial issue raised in the letter to be reviewed. When the review is prepared I will be in touch with you again."

On September 6, there were various other pieces of correspondence but the most recent one is dated January 9, 1986, from Mr. Copeland to myself, which concludes: "I would still appreciate your doing whatever you can to cause Mr. Scott to respond to me in a substantive way."

So having apologized for taking so much time, I invite the Attorney General to respond in a substantive way to the question that was put by Mr. Copeland on behalf of the former members of the Praxis Corp. last July. Is he prepared to provide the names of the officers in question so that a Justice of the Peace may make a decision as to whether or not a private prosecution is warranted in this case.

Hon. Mr. Scott: On August 23, 1984, the Assistant Deputy Attorney General wrote to Mr. Copeland with respect to a previous request related to a stay of execution and provided over some 20 pages of information to Mr. Copeland indicating why the Attorney General of the day had issued the stay in similar proceedings. I have reviewed the circumstances in this case and while I have not replied to Mr. Copeland, I will be doing so shortly.

In the course of that I will have reached the same conclusion, for slightly different reasons, including the reasons the Assistant Deputy Attorney General gave but also for additional reasons. The result will be the same in this case. I do not propose to release that information to Mr. Copeland or his client.

Because the matter is very complicated and no doubt important, let me say how I view it. First, the responsibility of the crown law office and of the Attorney General is to determine after appropriate investigations whether charges should be laid by the crown or by the police, and to see that question is answered by an examination as to whether there is sufficient evidence to raise a reasonable and probable ground and whether it is in the public interest to lay charges.

There will be cases where both requirements are met and charges will be laid by the police or the crown law office and prosecuted. There will be cases, as you can imagine, where one of those elements is lacking where charges will not be laid. None of this has anything to do with private prosecutions which can proceed privately. I recite those principles because I believe they apply not only to the laying of charges but also to the release of information to those who seek to lay charges on their own. Those tests have been applied by our office in order to determine whether it is proper to reveal the information that Mr. Copeland seeks.

I will give you an example. If we conduct an investigation related to X to determine whether X has committed a criminal offence and we conclude the case cannot be made out against X or that it is inappropriate for some reason of public policy to prosecute X, I do not believe it is proper to release the name of X to other persons so they may launch a private prosecution against him.

In my opinion, as a matter of general principle, that would be a breach of my responsibility. That

is the way I proceeded with the issue. I will give the committee the information I have that is, in effect, a chronology.

On December 18, 1970, documents appear to have been stolen from the office of the Praxis Corp. on Huron Street. In February 1971, documents were delivered by one Peter Worthington and others to the Royal Canadian Mounted Police.

In early 1977, the Metropolitan Toronto Police force, with the assistance of the crown attorney of the county of York, investigated to determine whether there was any justification to lay charges against any persons as a result of the theft or as a result of the possession of those documents in the hands of the RCMP. The York crown attorney, within whose jurisdiction the matter fell, concluded there was no justification for laying charges in early 1977.

As a result, in February 1977, the documents which had come into the hands of the RCMP were returned to Professor Buchbinder, who is one of the principals of the Praxis Corp. from whom they had been stolen.

In April 1978, as a result of further information brought to the attention of the crown attorney's office, another investigation covering much of the same material but more extensive was launched. It was conducted by the Ontario Provincial Police and crown law officers in the Ministry of the Attorney General. It produced a report–I do not have the date of it, but I think it was in early 1979–saying there was no justification for laying charges on the basis of the information that was then available.

On April 25, 1980, almost 10 years after the theft, a private information was laid by Professor Buchbinder against Chisholm and Yaworski who were officers of the RCMP. On January 9, 1981, the Attorney General of the day issued a stay and the case made its way to the Supreme Court of Canada, the result of which you know. That case is not the case with which we are concerned here.

On a date I do not have, Professor Buchbinder laid another charge against persons unknown who, he says, came into possession of these documents, presumably when they were delivered to the RCMP some 14 years ago in 1971. In its decision dated June 28, 1985, the Court of Appeal concluded that in Ontario you could not lay an information against persons unknown.

4:10 p.m.

Following that, Mr. Copeland made the request of me to which Mr. McClellan has referred. I should tell you it is my view that, as Attorney General, it would not be proper to remake decisions about the determination to prosecute or to stay or to provide information that were made by previous holders of my office, particularly ones that were made many years ago, unless there were compelling reasons dictating that the situation should be reviewed and a different determination made.

I do not believe there are those compelling reasons in this case. However, I have reviewed the matter and I do not believe the issues are any different than the issues canvassed in the Assistant Deputy Attorney General's report to Mr. Copeland of July 3, 1985.

Mr. McClellan: I thank the Attorney General. I do not intend to belabour the point. I was hoping mostly to obtain the Attorney General's position as a matter of record and I have done that.

I will only express this observation: in his address to the committee, the Attorney General indicated there were two criteria which could be applied to the question of whether to prosecute. One had to do with evidence, and I believe he said the other would be a matter of public interest. I hope the previous review by the previous Attorney General and the re-review by the present Attorney General were based on a consideration of evidence and not on the second criteria of public interest.

I think the public policy question at stake here has to do with the perceived immunity of the Royal Canadian Mounted Police from prosecution for dirty tricks in this country. That is a matter of public record flowing from, among other things, a royal commission. As I said, the only question that has been before the Attorney General in this case has been the question of evidence. In his reply to Mr. Copeland, I hope he will address himself to that concern.

Hon. Mr. Scott: Mr. McClellan obviously has access to Mr. Copeland's correspondence, or parts of it. If he would like to and can obtain Mr. Copeland's consent, I would be delighted to release to the committee the Assistant Deputy Attorney General's review dated July 3, 1985 which sets out the circumstances.

Also, the public interest required to justify a prosecution has been documented since the earliest times of this office. In England and in Canada, it is not anything short of the sense that criminal law should be used to vindicate breaches of the law, but only those breaches of the law that it is in the public interest to prosecute.

This does not mean the others will be covered up. It simply means there will be breaches of the peace that it may not be in the public interest to prosecute.

Let me give an example. If I determined by my own investigation that an assault was committed by Mr. McClellan, let us say–unlikely as this may be–some 15 years ago and I have determined there is insufficient evidence to show reasonable and probable grounds of the offence; by looking at the file, I have determined that two Attorneys General over 10 years have decided not to prosecute and I do not believe it is necessarily in the public interest at this stage to prosecute, even if it could objectively be said that an offence was committed. It is a value judgement that has to be made. I have made it as best I can.

Mr. McClellan: Yes, I appreciate that. However, my concern is not only as a legislator but also as a citizen whose name was probably contained among the stolen documents which ended up in the possession of the RCMP.

Hon. Mr. Scott: As was probably my own.

Mr. McClellan: As was probably your own. The public policy consideration is substantially different than in the analogy you used in the assault case. It is one thing to review the question of assault after the passage of 15 years, and another to consider whether the federal police have been obtaining names through foul means as well as fair for purposes of their own so-called security considerations without ever having to face the consequences of those actions. That is why I am raising it again 15 years after the event.

Hon. Mr. Scott: The only person who can tell us whether your name and mine are in the documents is Professor Buchbinder who has had the documents back for 10 years and has not told us.

Mr. McClellan: I would be very annoyed if my name were not among them.

Mr. Chairman: Mr. Warner, whose name may or may not be in them–

Hon. Mr. Scott: He is too young.

Mr. Warner: I appreciate that. It is likely there along with the radical Attorney General.

Hon. Mr. Scott: Just a moment. To put me in company of Mr. McClellan is not to say anything about my radicalism. It could be just Tory blue.

Mr. Warner: Maybe we will get a chance to discuss radicalism as we go through estimates.

I have two items to raise in the estimates. They are with regard to votes 1604 and 1606, in the event other members of the committee may wish to participate and put questions to them.

Vote 1604 is with respect to a Mr. Michael Lane. The way I understand it is that Mr. Lane was a crown witness in the Peter Demeter trial in 1985. His testimony was a key factor in the trial. Mr. Lane alleges that many promises were made to him by the Peel Regional Police Force with respect to his future: that he receive money–$100,000 I think–to pay moving expenses, and that they move him out of the area and find him a job.

On W5 Sunday, it was stated that another person has apparently threatened Mr. Lane's life. I guess Mr. Lane is currently under protection by the Peel Regional Police Force. He is concerned about a document which releases the police from all obligations towards him after a six-month period which he believes he is being coerced to sign.

There are two questions I wish to place before the Attorney General. Could he bring us up to date on the situation surrounding Mr. Lane? The broader question has to do with the criteria applied in making agreements with crown witnesses. How is this handled and what criteria are applied?

Hon. Mr. Scott: I am delighted you asked the question, Mr. Warner, because I saw the television program. Both the Solicitor General (Mr. Keyes) and I were interviewed at length. I guess you have learned it is dangerous to participate in that process. I thought the account given of our interviews was less than complete.

The situation is this. There are two circumstances in which money may be paid to a witness by the crown. Both have been approved by the Supreme Court of Canada. The first is that the police investigative forces are entitled to retain people to assist in investigation by wearing body packs, going to purchase goods and that sort of thing.

4:20 p.m.

From time to time, it happens that those persons are paid their out-of-pocket expenses. For example, if you were privy to a potential offence and the police thought your assistance would be useful in investigating whether an offence had occurred and you were two weeks with them in the investigation, it is likely that any lost income or expense you had would be reimbursed.

This is a relatively routine exercise in which police forces all over the continent engage. It has to be done discretely and carefully because we are dealing with municipal tax dollars. Police budgets being what they are, it is not done extravagantly.

The second case is the witness protection program. There will be instances where a person

is prepared to give evidence for the crown and says, "Notwithstanding my desire to give evidence, I feel I will be injured either during the course of the trial or after the trial." You can imagine cases where that threat, in the light of the background of the accused, is a very real one.

In those circumstances the crown attorney, not the police, is authorized to consult another crown attorney who is not prosecuting the case to determine what kind of witness protection may be given. That protection can range from placing a guard at the witness's home during the course of the trial to assisting the witness to move to another town, get employment in another place or move his family to another province.

There are a number of cases in which an independent crown attorney, not connected with the police who have investigated the case or the crown attorney who is prosecuting the case, will make a determination that witness protection is justified. I will make two points about that.

First, the witness protection program is not intended to solicit evidence. At any time the witness is perfectly free to say, "I have changed my mind, I do not want to testify." There is nothing we can do about that. The program is not conditional, in that sense, upon evidence being given.

Second, it is a matter of routine that before the testimony is given, the crown attorney invites the witness to assist in the preparation of, and to sign, a memorandum, not an enforceable contract, that sets out the witness protection to be provided.

Before the trial, the witness and crown attorney will sit down. The witness may say: "I need witness protection. I need to be moved to Orillia and I am going to have moving expenses. I am traumatized by this exercise so I will need six months psychiatric counselling."

The memorandum spells out what the crown is prepared to provide by way of witness protection. The witness is not required to sign that memorandum if he does not want to. Once he has signed, it is not an enforceable document. It is not a contract, so we cannot hold him to it; however, he is invited to sign it.

In this case, as I told the reporters on W5, Mr. Lane attended on the crown attorney seeking witness protection. I am advised he attended with his lawyer. A memorandum was prepared that set out the witness protection the crown was prepared to offer Mr. Lane. Mr. Lane and his lawyer, as they were perfectly entitled to do, decided not to sign the memorandum. Thereafter, Mr. Lane gave evidence for the crown in the Demeter case.

Since that time, as you know from watching the program, he has said promises were made to him by the police that very large amounts would be paid. It is a matter of record that he said that. I take it he is contemplating some proceedings to advance that claim. It strikes me as odd that as far as we can tell that was not alluded to at the time when he was asked to sign the memorandum before he gave evidence.

Be that as it may, that is the position he is taking. I will say no more about it. That is the Michael Lane case.

Mr. Warner: I am not sure that it is. I think there is a bit more.

Hon. Mr. Scott: It is the case as I understand it.

Mr. Warner: Okay. If I understand properly, he received a cheque for $5,000.

Hon. Mr. Scott: Yes.

Mr. Warner: He alleges a balance owing of approximately $95,000. There is a huge discrepancy between what he is claiming and what I am hearing from the other side.

Hon. Mr. Scott: Can I interrupt one moment?

He says, and there seems to be no doubt, he did undercover work for the Peel Regional Police force, for which it has acknowledged he was paid a total of $5,000. He alleges the Peel Regional Police force offered to pay him much more and they owe him money.

I make no comment on whether that is true or not. There are two stories. That is a matter between him and the Peel Regional Police force, and perhaps for the Ontario Police Commission under the Ministry of the Solicitor General.

When you come to his relations with the crown attorney and the Ministry of the Attorney General, it is true we offered witness protection because he sought it. We stipulated what we thought was fair and reduced to a memorandum what we were prepared to do for him. He elected not to sign the memorandum. I do not understand him to say the Ministry of the Attorney General or any crown attorney offered to pay him any more. He really could not because what we offered is set out in writing in the presence of his lawyer.

Mr. Warner: Aside from the money issue, the other issue which he raises is that his life has been threatened publicly. Is there a limitation for the protection of witnesses? He alleges a limitation of six months was placed upon him by the police force.

From a policy standpoint, obviously protection for life cannot be contemplated. I am looking for some policy answers as to how one decides the appropriate length of time to provide protection. In this situation where the threat has been made public, perhaps it is a special circumstance and Mr. Lane should continue to be afforded protection.

Hon. Mr. Scott: Igor Gouzenko is the most famous beneficiary in Canadian history of a witness protection program. He was afraid he was going to be killed by the NKVD, so the Royal Canadian Mounted Police moved him. They may have given him plastic surgery. I think they gave him some hair he did not have before. They got him a job.

There is no theoretical limit to the protection we will provide, though there is obviously a practical limit. The witness comes first to say, "I want protection." We do not search these people out to pay them money. They are subpoenaed to be crown witnesses. If they come to us and say they want protection, we consider that.

It is our policy that–and I hope it is followed in every case–when the crown attorney prosecuting the case is asked for witness protection he does not deal with it himself. That way there will be no misunderstanding about the need for witness protection in relation to any compulsion to produce evidence. It is referred immediately to another crown attorney not involved with the case to assess the need.

4:30 p.m.

Let us assume that both sides recognize the need is real. We work out how that need can be met. To take an extreme case, the witness may say, "I want to be moved to the south of France and I want $50,000 a year for life." The crown attorney may say, "That is not the witness protection we are going to provide. The best we will do is..." It is negotiated.

Quite often and quite legitimately–I do not criticize it–witnesses have a sense of the protection they require that is different from the sense the crown attorney has. We are dealing with tax dollars, so we have to deal with them carefully. In the end, the crown attorney in charge of witness protection says, "This is what the crown can do. Here is a memorandum which sets out what we can do." We did all of this in the presence of Mr. Lane's lawyer.

At that point he can sign the agreement or not sign it, as he wishes. He can agree to give evidence or rely on his normal rights if he wants to.

The problem is Mr. Lane has said he is in need of protection and I do not quarrel with that because I do not know enough about the precise case to judge it, but he is making it more difficult to protect him all the time. When you go on national television you reduce the capacity of the crown to offer any useful assistance.

As a result of being the featured player on W5, his face is now very well known to millions of Canadians. It is a problem. If the witness is really in need of protection we will assist him judiciously, in the light of the fact we are spending tax dollars. He has to assist us as well. If he wants to be incommunicado, he cannot go on national television.

That, of course, was the problem of Igor Gouzenko with the Royal Canadian Mounted Police. Mr. Gouzenko wanted to disappear in a small rural Ontario community so he could not be caught by any Soviet agents. He then started to come out of the community, to write books and go on book tours and television. At that point, the RCMP had to recognize this and say, "Mr. Gouzenko, you are making it very difficult for us to maintain your anonymity. You are on television two days a week." That is the problem with Mr. Lane.

Mr. Warner: You have ruled out southern France, but do you rule out Rosedale?

Hon. Mr. Scott: We indicated what we would offer Mr. Lane by way of protection long before the trial. He has rejected it.

Mr. Chairman: Could I remind the members of the committee that the Attorney General's estimates end at 5:10 p.m., and we have limited amounts of time left to complete our discussions on the estimate items.

Mr. D. R. Cooke: Just a clarification. It has always been my understanding that money is paid from time to time–it is usually done up front–for people to be co-operative with the police, present evidence and make evidence available in court. Is that correct? I know we are talking about protection money right now.

Hon. Mr. Scott: The crown attorney's office deals with witness protection and your question is not directed at that. It is directed at payments the police may make to obtain the assistance of citizens in the course of an investigation. That is a police matter regulated by the individual police forces under the general direction of the Ontario Police Commission and the Ministry of the Solicitor General.

Money was paid by the regional police to obtain the assistance of Mr. Lane in the course of

the police investigation. He put on a body pack, and he and Mr. Demeter met on a number of occasions. He was part of the police investigation team. I gather they paid him $5,000. He says they promised him more than that. His complaint, if any, is about the police department of the region of Peel. No crown attorney or justice department official had anything to do with the case at that stage.

Mr. D. R. Cooke: However, the crown attorneys would invariably be consulted before any decision during the course of an investigation.

Hon. Mr. Scott: They might be, and I would hope any police force that was engaged in a matter it thought presented difficulties would consult the crown attorney. That is up to the police force.

Under the Police Act, the police forces have an independent obligation by statute. They are not servants of the crown attorneys. They are not even servants of the government or the municipality. They have an independent statutory duty. While that duty can be reviewed, they have to answer to the statute.

Vote 1604 agreed to.

On vote 1606, courts administration program:

Mr. Partington: I wanted to talk about the unified family court. That is vote 1606.

Are there plans to extend the unified family court to other areas of Ontario other than Hamilton?

Hon. Mr. Scott: This matter is being very carefully looked at. There are perhaps three areas which cause concern and will be part of the decision.

The first is a determination of how the unified family court has worked in Hamilton the last few years. The consensus is that it has worked reasonably well; however, I have spoken to members of the bar who have reservations about certain parts of its operation.

In theory, it appears to be an excellent mechanism. In practice, for much of that period it has been a superb mechanism under Judge Steinberg; however, some members of the bar have reservations about its application beyond Hamilton. I want to consider whether it is working as well as intended.

The second problem is that to make the system work you must have joint appointments made by the Attorney General of Canada who appoints the judge, a district judge, and the Attorney General of Ontario who appoints the provincial judge, in one person.

When Mr. McMurtry was the Attorney General of Ontario there was an excellent relationship between him and his federal counterpart. That relationship appears to have deteriorated in the last year. There has been a suggestion–I have not run it to the ground–that one or two of the latter appointments to the Hamilton unified family court were made without the concurrence of the provincial Attorney General.

I do not anticipate this will be a problem from now on. The Attorney General of Canada and I–as far as I can tell, and I have every confidence that it is right–have an excellent working relationship.

Mr. O'Connor: Except on Queen's counsels.

Hon. Mr. Scott: No; our relationship on the QC issue is superb. He made the normal appointments in the federal public service, for which I am pleased. On that issue, our working relationship is excellent.

In order to deal with the matter permanently, it may be necessary to obtain some kind of amendment to section 96 of the Constitution which deals with federal judicial appointments.

So you have that problem: the authority to appoint judges.

If an extension is decided upon, the third problem is how the extension would be carried forward across the province. There are some people who think a unified family court works best if the unification is between a Supreme Court judge, a district court judge and a provincial judge.

There are some who think the provincial court and district court combination is apt. There are many members of the bar who think the experiment would not work well outside Hamilton. I am trying to grapple with those problems and make a decision.

Mr. Partington: When do you expect to make that decision? Do you have any idea?

Hon. Mr. Scott: When I have grappled with the problems to a resolution.

Mr. Chairman: Are you going to wrestle them to the ground?

Mr. Partington: Is it something that you are actively pursuing now?

Hon. Mr. Scott: Yes, it is something I am actively considering.

4:40 p.m.

Mr. Warner: Have we carried vote 1605?

Mr. Chairman: We have carried vote 1605, and we have carried items 1, 2 and 3 of vote 1606. We are on item 4 of vote 1606.

Hon. Mr. Scott: Before we leave it, and particularly because of your constituency, I would be grateful to get whatever input I can from members of the committee about how they think the process has worked, if they are familiar with Hamilton or if they hear from Hamilton people.

There is a division of opinion about how it has worked and whether it is suitable in more rural communities or in larger metropolitan communities like Toronto.

Mr. Chairman: Before I get to Mr. O'Connor and to Mr. Cooke, in that order, would the committee glance ahead at vote 1607. We only have half an hour left, so we are going to have to move along. I would ask the indulgence of the committee to keep questions concise. I would ask the Attorney General to keep his answers concise.

Hon. Mr. Scott: The next question may provoke a half hour answer, but I will do my best.

Mr. Chairman: I know how easily provoked you are, sir, so I will try to mellow the committee in whatever questions they might raise in such a way as to not provoke any lengthy responses from you.

Mr. O'Connor: He must know what is coming. He cannot wait to hear it. At the end of my remarks, however, I will not suggest, as I did the last time we raised this subject, whether he is prepared to do the time instead of doing the job he is supposed to do.

With regard to the Hamilton unified family court facilities, and this is something I have raised before in the House, there have been long-standing difficulties. A litany of problems was raised initially by the Ontario Public Service Employees Union, the union that represents the court workers and staff in that building, relating to the air quality, the size of facilities, the lack of robing rooms for the bar and the lack of certain facilities for judges.

There is a lengthy list. After some litigation and before it reached the Supreme Court, an agreement was entered into between the union and the Ministry of the Attorney General whereby the ministry agreed that certain work would be done to rectify those facilities by the end of 1985. Failing that, the union was at liberty to commence contempt proceedings against the ministry.

The work was not done. As I understand it, those contempt proceedings have either been launched within the last week or are about to be. Can the Attorney General bring us up to date on the ministry's position in this, first with regard to how he proposes to solve these difficulties over the short run. In the long run I understand the plans include the development and building of a brand new facility altogether; that is down the road.

Just to add to the problems, some judges sit in one courtroom in the morning and then traipse through the streets of Hamilton in their robes, followed by the clerk carrying the box of files, to another building to hear cases elsewhere in the afternoon. These are unacceptable conditions, particularly for the public, the members of the bar and the judges and staff who operate in that facility.

Could the Attorney General tell us what plans there are? What is the status of the contempt proceedings? What is going to be the likely outcome?

Hon. Mr. Scott: I am entirely sympathetic to my friend, Mr. McMurtry, and my colleague, Mr. Pope, who must have been shattered when their administration of this office was faced with contempt proceedings. I understand how they would have felt when that proceeding was taken against their administration.

The matter of the contempt proceedings has now been rectified. It was related to the air quality of the building. We believe the circumstances have been rectified. One of the remaining problems is a discrepancy between the ministry and the union as to how the air quality is measured. In other words, they get a different reading from us as a result of the changes that have been made.

We have taken the steps that we can take to deal with the matters that Mr. Justice Gray referred to when the contempt proceedings were decided. Over the long term, we recognize, as I am sure Mr. McMurtry and Mr. Pope must have recognized long ago, that the facilities for the unified family court in Hamilton were not only inadequate but bursting at the seams.

We developed two proposals. One was a short-term proposal that would have involved leased accommodation and would have moved the unified family court into rental quarters in 12 to 15 months. An alternative was presented to us by the judges of the unified family court, the Hamilton Law Association and the Hamilton city council that instead of adopting the short-term solution, we should opt for a long-term solution. This involved purchasing the old library building, an historic building, from the city of Hamilton and converting it to unified family court use. The difficulty was that it would take about 36 months to make occupancy suitable.

We discussed this with the unified family court judges, representatives of the bar and the city of Hamilton. All three groups agreed they preferred the long-term solution, the acquisition of the library for court facilities, instead of the short-term solution of new rented quarters. Therefore, we were able to announce in Hamilton last week–the Minister of Citizenship and Culture (Ms. Munro) did not let me go–that we had acquired facilities for the unified family court from the city of Hamilton. The Ministry of Government Services will begin on it.

In the meantime, to deal with the problem that all of us–the bar, the judges and the city–recognize will be current until the building is reconditioned, we have obtained some space in the district court, which is satisfactory to the judges. They have said so. You made some reference to parking spaces. We got them some parking spaces.

Mr. O'Connor: I take issue with some of what the Attorney General has indicated. As I understand it, the contempt proceedings were ordered or permitted by Mr. Justice Gray in case the work had not been done satisfactorily by the end of the year.

I remind the Attorney General that his government was in office for the last six or seven months of 1985. The work was not done by the end of the year. This was his responsibility and not that of any former government. There was a clear indication by Mr. Justice Gray that should the work be incomplete at the end of the year, the union was free to bring further contempt proceedings. I understand it is in the process of doing that.

They are not satisfied. It is not only a matter of air quality. It involves a whole litany of difficulties with regard to those facilities. Nothing was done in the last six or seven months of 1985 to rectify even the least of the difficulties the court facility was facing. Perhaps he can answer this specific question: has his ministry been served with the documentation bringing the matter back to court by way of contempt proceedings?

Hon. Mr. Scott: One does not want to be overly political in this inquisitorial forum. As you know, the previous administration allowed this condition to be created. When we came into office there was an order made by Mr. Justice Gray that had not been complied with.

Mr. O'Connor: Why did you not comply with it?

Hon. Mr. Scott: We have complied with it. That is the point I tried to make.

Mr. O'Connor: Have further proceedings commenced?

Hon. Mr. Scott: As far as I am aware, no proceedings have commenced. If you speak to the union it may think there is no compliance. There is a difficult question about how to measure the ambient air quality. We think we have complied. As I understand, no steps have been taken to assert we have not. We had a tough time. We were left with six months to remedy a situation that, probably for the first time in history, exposed this ministry to contempt proceedings. We did the best we could and we have met the challenge.

4:50 p.m.

Mr. O'Connor: Other people wish to speak, so to wind up I suggest you did not do anything in the last six to seven months of last year.

Hon. Mr. Scott: You are wrong.

Mr. O'Connor: Furthermore, the contempt proceedings have commenced. If your ministry has not yet been served with the documentation it will be shortly.

Hon. Mr. Scott: The Ministry of Labour standards and programs branch says we have made extensive alterations. I take it that is what you cover under "doing nothing in the last six months." The extensive physical alterations we have made, which I would be glad to show you the next time you are in Hamilton, meet the standards of the Ministry of Labour for ambient air quality.

Mr. O'Connor: It is not just the air, however; it is a whole range of other problems that they have put in their material and that you should be aware of.

Hon. Mr. Scott: I got them all from Mr. Pope the day he left office. He simply said: "You are going to be in contempt of court. Here are all the things you have to do and you had better get at it because we have not done anything about it."

Mr. O'Connor: We do not want to politicize these proceedings, do we?

Hon. Mr. Scott: Two can play that game.

Mr. Chairman: Can I ask the indulgence of the committee? We are on vote 1606, item 4.

Mr. Warner: As I indicated before, I have only one item left to raise.

Mr. Chairman: On the whole balance or on vote 1606?

Mr. Warner: It is on vote 1606 and that is it. The other questions will be raised in other ways at other times.

In the interests of time and so that Mr. Cooke can get his question in, I will raise this matter and if you wish to respond in greater detail later on, that will be acceptable. It has to do with sheriff's offices. I am not sure whether you have received a letter from J. Delbert Adams. I would like to read a paragraph from a letter dated November 1, 1985, that was sent to Ms. Gigantes.

Attached to it were various news articles. One is about a probe into the sheriff's office in the county of York. There is a news article, "Sudbury Sheriff Guilty on 35 Charges." Another says, "Ex-officer Urges Public Hearings on Sheriffs Act."

In the letter this gentleman asks, "As opposition, are you going to confront the Attorney General in the Legislature on why charges were not laid and whether or not the police report will be made available to you in view of the allegations made by Mr. J. Bremner, former sheriff, who stated on the eve he resigned that improper behaviour was taking place throughout the ministry?"

By "ministry" I do not think he means the Ministry of the Attorney General, but the sheriff's office. Candidly, when I saw that reference I was dumbfounded. I read through all the material and it appears he is referring to the sheriff's office. I cannot imagine anyone in his right mind making an allegation against the Ministry of the Attorney General.

Attached is a petition for an inquiry into sheriff's offices that states, "The petitioners ask that the government immediately cause an inquiry to be held to determine the extent to which corrupt practices have existed in Ontario's sheriff's offices, and make recommendations directed at preventing any recurrence of such practices."

Hon. Mr. Scott: The question should really be directed to Mr. Pope, but I am here in his place and let me see whether I can respond to it as a result of my inquiries.

On February 2, 1984, Mr. Adams, a former employee of the sheriff's office in the county of York, wrote to Mr. Gregory, then Minister of Revenue, making allegations about irregularities in the sheriff's office, not by himself but alleging irregularities by other persons then in the employ of the sheriff's office.

As a result of hearing of it from Mr. Gregory, the Ministry of the Attorney General asked the Ontario Provincial Police to investigate. It made a thorough investigation of whether there was sufficient evidence to lay any criminal charges. It concluded there was no evidence that warranted the laying of criminal charges. Following that, the determination was made, as you might imagine, not to start any criminal proceedings.

Since that time, as a result of information that came to our attention, two members of the staff of the sheriff's office have been dismissed. One of them filed a grievance under the Public Service Grievance Board process. It is currently pending and will be heard in February or March. It is also the subject of an application for judicial review that will be heard about the same time, so I do not want to make any comment on the merits or factual background of that piece.

The second employee was dismissed in July 1985 following an investigation. He filed a grievance under the Public Service Act. A hearing was held that led to his reinstatement. That is the circumstance and those are the events that have occurred. I should tell you that the York county sheriff, Mr. Bremner, retired in August 1984 and has been replaced by Sheriff Pitkin. That is the first question.

The second question is: Are we going to release the police investigation report? To save time, I refer you to my answer to your colleague, Ms. Gigantes, on the late show, when we canvassed the whole business of releasing police reports. It is my position until the Legislature directs otherwise that I will not release a report when a charge has been laid, because reports contain all kinds of hearsay and irrelevant material that would prejudice the fair trial of any case. For a similar reason, I will not release the report when there is insufficient evidence to lay a charge. To do so would be to damage people against whom there are no significant allegations of criminal conduct.

Mr. Warner: Are you satisfied that all the sheriff's offices throughout Ontario are operating in a fit and proper manner?

Hon. Mr. Scott: I have confidence in the officers of my department. They are in charge of the administration of the sheriff's offices. The question you ask is really unanswerable. I think what you are asking me is: Is there someone among the 5,000 employees who is committing an irregular act today? I think we have systems in place that reduce very substantially the prospect of this happening or of it happening undetected. However, I cannot give you any guarantee.

Mr. Warner: You will continue your random spot checking.

Mr. Callahan: Are the McCarthy hearings starting?

Hon. Mr. Scott: We do audits, and as you know the Provincial Auditor also does audits.

That is the process by which we maintain regularity in that department of the ministry.

Mr. O'Connor: The matter of the small claims court jurisdiction was gone into at some length in the last session, and I will not do so again. The Attorney General is aware of my views on the matter. I might ask whether he is prepared to provide us with any cost studies he has done with respect to implementing the $3,000 limit outside Metropolitan Toronto, and also the savings to the district court level implemented by raising the level to $3,000; the savings by relieving the higher court level of a certain number of cases it would otherwise have to deal with.

5 p.m.

Hon. Mr. Scott: I will be delighted to provide you with a summary of our estimate of the cost of instituting it, which I said last time totalled about $3 million. I cannot give you any figures for savings in the district court because it is not possible to accept there will be any. The practical reason is that if you assume that the 30 per cent of the cases which will be added to the small claims court offences–and it is now called the provincial court–are cases that would otherwise be in the district court, which I think is a fair assumption, the question is, what savings do they represent in the district court.

They do not represent any savings in judges. They do not represent any savings in space, which is by and large fixed. They probably do not represent any savings in personnel. What they can do, which is significant, is reduce the backlog in those courts. That is an important consideration, but it will not achieve any significant cost saving.

Mr. O'Connor: I would take some issue with that and suggest that in the long run savings would be effected, because fewer staff and less space might well be needed than at present. I agree there would be a phase-in period over a considerable period of time, but fewer staff might be achieved through attrition in the long run.

What you are saying, I take it, is that no studies have been done because an assumption has been made that there are no savings to be had. Is that correct?

Hon. Mr. Scott: No, that is not true. An analysis of the problem has been made that I think is sound, and that indicated there is no significant prospect for the savings you are talking about. This is not only for the reason I have given but also because the extent to which Supreme Court work is moving down to the district court is again putting pressure on those facilities.

Mr. O'Connor: Let me make one more point. Sure, the savings to the ministry are of some importance, but the reason for the existence of the ministry is to serve the public. The public in the areas outside Toronto is being severely inconvenienced by this failure to go to the higher level. Small businessmen and individuals who wish to process their claims are being hindered from doing so because of the higher costs and the time lags in the district court system.

Notwithstanding the cost of $3 million or whatever it is, it is a move that should be made immediately for the purposes of saving time and cost to a significant number of people, who are getting in touch with me on a regular basis.

Hon. Mr. Scott: No one better to speak to than you.

Mr. O'Connor: My mail on this issue is continuing. It is significant and it should be done. At any rate, you are going to give us the study.

Hon. Mr. Scott: I will give you a summary of the study. I am entirely sympathetic to the request to extend the jurisdiction of the small claims court, but it is one of those things that has to be considered in the light of other budgetary considerations. It is not our desire to raise taxes unnecessarily.

Mr. Chairman: On that note–that very clear note of restraint on the part of the Attorney General–can we now look at Vote 1606?

Hon. Mr. Scott: Fiscal responsibility.

Mr. Chairman: And fiscal responsibility.

Item 4 agreed to.

Item 5 agreed to.

Vote 1606 agreed to.

On vote 1607, administrative tribunals program:

Mr. Chairman: I am moving rather quickly. Do you want to look at all of 1607 for the moment? Is there anything in vote 1607 you want to raise as a question: Assessment Review Board, Board of Negotiation, Criminal Injuries Compensation Board, Ontario Municipal Board, Office of the Public Complaints Commissioner?

If the committee will allow the chairman, since we have five minutes, I have one quick question. I found the ratio of costs to payouts related to the Criminal Injuries Compensation Board to be extremely high in terms of the operational expense. I do not have my notes right here in front of me, but when I reviewed the estimates of your ministry, it was something like

a 4:1 ratio. It seemed that an extremely small amount was being paid to compensate those who had suffered from criminal injuries.

I wondered whether that is not an area that could stand further review, since from time to time we all read of cases in which those subjected to criminal acts, and the injuries that result from those, have indicated their displeasure at the result of some of the awards that have been granted. I would like a comment from you on that.

Hon. Mr. Scott: The ratio is inappropriate because the reality is that the limits of the awards the board can grant under that act were fixed by statute in 1971 and have not been changed by legislation since. This has been in a period of very high inflation, so the awards now made are, in real dollar terms, very substantially less than they were in 1971.

The costs of making those payouts–the investigative process, which is quite elaborate, the hearing process and so on–have increased by virtue of inflation. That is why the ratio looks inappropriate. The limits of payout are fixed and the costs of investigation have increased.

Bearing in mind the other financial obligations of the government, we are reviewing the question of whether it is not time to ask the Legislature to look at the limits fixed in 1971. I take it your plea is that we should do so.

Mr. Chairman: A very strong plea, quite frankly. If some measure of consideration for inflation has been reflected in the operational administrative charges relevant to this particular board, then the same consideration should be due those who are really the raison d'être for the existence of the board.

You have one cost going up very substantially and another cost that is fixed at a totally inappropriate 1971 level. My sympathies lie with those who have been injured as a result of a criminal act. From a very personal standpoint I would like to see the rates reflect inflation during the past 15 years to bring them into line with something more current and more responsive to today's needs.

Hon. Mr. Scott: I will not make the traditional political comment that one could make in the light of that. I simply say that the chairman of the board is the former and distinguished member for St. David, and, knowing her well, I am sure she is doing everything she can to keep costs down.

Your observation about the limits of the awards is entirely apt. It is a matter of considerable injustice that they have not been altered since 1971. When we get a budget reallocation we hope we can do that.

Mr. Chairman: I am not going to say that the former member for St. David is limited by legislation under which she operates and therefore is constrained. I would ask only that you review it. I, for one, look with sympathy on some realistic increases. I hope I will be able to encourage the party I am affiliated with to do so, and I hope the third party will also agree to something adjusted in a more realistic fashion. I leave that with you.

We only have about a minute. I did not mean to dominate the last few minutes.

Mr. Callahan: Quickly, is the Office of the Public Complaints Commissioner a board that reviews–

Hon. Mr. Scott: Metropolitan Toronto Police complaints commissioner, yes.

Mr. Callahan: Do the estimates here include any buffer for an enlargement of that process?

Hon. Mr. Scott: No, they do not not.

Mr. Warner: They do require it. The time has expired, but I would like at some point to discuss two specific aspects with the Attorney General. One is the possibility of extending this system, now available only to the city of Metropolitan Toronto, to other municipalities throughout the province.

The second is to discuss some of the concerns that police officers have with respect to how the system is functioning without going the route they appear to be pressing, which is to dissolve the complaints process.

Hon. Mr. Scott: I do not know whether you want to discuss that now.

Mr. Warner: We do not have time right now.

5:10 p.m.

Mr. Chairman: I would like to close off these estimates. The point is relevant. I would add, however, that in the context of that discussion there should be input from those local municipalities that wish this kind of review board to be imposed or suggested for their particular jurisdiction.

Many jurisdictions have no interest whatsoever in another layer of bureaucracy and cost. They feel that the local commissions and the positions they have in place at the moment in relation to this whole area of activity are more than sufficient. I would like that not to be imposed when the discussion comes up; rather, it should be looked upon in a very sensitive fashion.

Now I am going to call vote 1607, and we will finish up the estimates.

Vote 1607 agreed to.

Mr. Chairman: Shall the first historic estimates of the Attorney General, as he sits before us in living colour, be carried? Carried. Congratulations on your first set of estimates.

Hon. Mr. Scott: I want to thank the committee very much. These have been the longest 12 hours of my life.

Mr. Chairman: As they said in a movie, the title of which escapes me, "You ain't seen nothin' yet."

The committee moved to other business at 5:12 p.m.

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Ontario

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Legislative Assembly of Ontario

Standing Committee on Administration of Justice
Estimates, Ministry of the Attorney General

First Session, 33rd Parliament
Wednesday, January 22, 1986

Speaker: Honourable H. A. Edighoffer
Clerk: R. G. Lewis, QC

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, January 22, 1986

The committee met at 3:06 p.m. in committee room 1.

ESTIMATES, MINISTRY OF THE ATTORNEY GENERAL

Mr. Chairman: We have representatives of all the various and sundry parties in the Legislature. We know Mr. Warner will just be getting some sustenance and will shortly take his seat so we can get under way.

I believe the Attorney General has an opening statement to make. I will now ask him to read his statement into the record and we will get under way.

Hon. Mr. Scott: Mr. Chairman, I very much regret that the statement, even though it has been circulated to all members, has to be read in order to form part of the record, and I now do so.

I approach these responsibilities as the minister responsible for native affairs with real interest in engaging in a dialogue with the committee. We are in the midst of an historic constitutional debate in this country that will determine the relationship between native and non-native people for some time to come. I believe, therefore, in so far as possible, we should be united in our objectives and in the methods we choose to pursue those objectives. Accordingly, I would like to share with you my views on the role of the minister responsible for native affairs and the approaches we are considering to the major issues before us. I look forward to hearing your comments on both of these subjects.

The role of the minister responsible for native affairs is formally defined by order in council. The order in council sets out the following responsibilities: to develop native affairs policy across the government; to co-ordinate policy development, program delivery and special projects across ministries; to co-ordinate communications, negotiations and mediation processes in the native affairs area on behalf of Ontario; and to monitor line ministry policy development and program delivery.

Two features of this mandate are noteworthy. In the first place, it extends to all native people in the province. According to the 1981 census, there were 110,000 native people in the province, comprising 70,000 Indians registered under the federal Indian Act, three fifths of whom live on reserves; 26,000 Indians who are not now registered under the Indian Act, but may be eligible to be registered as a result of some new amendments to that act; and 13,000 Metis who have been recognized as one of the aboriginal peoples of Canada by virtue of the Constitution Act, 1982.

Part of the problem in discharging my mandate is in identifying just who constitutes a native person. Not the least of these problems is the fact that the 1981 census figures for nonstatus Indians and Metis are hotly contested. The Ontario Metis and Nonstatus Indian Association, for example, claims there are 185,000 Metis and nonstatus Indians in the province, rather than the 39,000 Metis and nonstatus Indians identified in the census.

Another aspect of the problem is that there are no agreed-upon definitions for the terms "nonstatus Indian" and "Metis." Consequently, while my mandate with respect to native people appears unexceptional in theory, there are practical problems of applying it on the ground.

The second point to note with respect to my mandate is that it does not include direct program responsibilities. I cannot act through program initiatives to effect the government's objectives in the native affairs area. I must act through the leverage I can exert by virtue of the positions I occupy in the provincial policy development process and in intergovernmental negotiating forums.

For example, as the minister with overall policy responsibility for native affairs, I am in a position to bring forward general proposals for the conduct of native affairs in the province. Recently, I was able to shepherd through cabinet a policy framework for native affairs which will provide substantial guidance to ministries in development of specific policies and programs for native people.

In addition, my mandate has given me a role in the negotiation of aboriginal constitutional matters. This role allows me to have some influence over the course of discussions on such issues as aboriginal self-government, access to land and natural resources, and language and cultural rights.

As chairman of the cabinet committee on native affairs, I am in a position to oversee the

application by line ministries of general government policy on native affairs. Specifically, I can assist in bringing native issues to the attention of the government by arranging for native delegations to appear before the appropriate cabinet committee, encouraging ministers to consider the ramifications of policies developed by other ministers and requesting ministers to bring forward submissions on specific issues. I cannot bring forward any policy which is the responsibility of a line ministry; I can simply assist in modifying in the interest of aboriginal people those policies as they are developed.

As Ontario's representative on the tripartite council, which was established to discuss and resolve issues of common concern to the province, the federal government and status Indian people, I am in a position to invite ministers to address directly issues raised by Indians which are of relevance to their ministries. To the extent that such face-to-face discussions engender agreement, they serve as an important means of initiating policy development within the government.

To say that the role and position of the minister responsible for native affairs can be used to some effect is not to say it is completely satisfactory in every respect. For example, there are a number of immediate problems.

The native people themselves are divided and have serious reservations about the way a provincial government should respond to their concerns. For example, some native people would like a ministry of Indian affairs with program initiation responsibilities on the federal model. On the other hand, other aboriginal people think that would be the worst possible development because it would encourage the federal government to think the province was assuming federal responsibilities now fixed under the Indian Act.

Although there is a forum to negotiate concerns of status Indians primarily living on reserves, there is no similar forum where the concerns of native people who live off reserves can be discussed. I began preliminary discussions recently to see whether such a forum could be established in Ontario.

Although the cabinet committee on native affairs exists as a mechanism to review policy submissions having direct implications for native people, there is no formal mechanism that ensures every policy proposal is considered in terms of its potential impact on native people. One method I am proposing in order to accomplish this is a cabinet directive that might require ministries to assess within the cabinet submission itself the effect of their proposals on native people.

In a broader perspective, it may be the province needs an altogether different organizational approach to native affairs. Certainly, some native organizations have approached us with recommendations ranging from the creation of a native affairs secretariat to the establishment of a native affairs ministry. While we have decided to take no action on these proposals in the short run, in large measure because there is no agreement in the constituency as to how we should approach it, none the less, I would be most interested in hearing the views of the committee on this subject.

To this point, I have shared my thoughts and role as minister. I would like now to address a few of the substantive issues with which we are confronted in this area.

It is fair to say that the issue which dominates the native affairs agenda is self-government. While the meaning of self-government is not well understood, it clearly contains elements of both self-determination and self-reliance. In my view, native peoples are asserting a moral and legal claim to the exercise of a greater degree of effective control over their daily lives. In asserting this claim, they are simultaneously putting forward a theory of development.

Simply put, native people are saying the problems in their communities appear intractable only because the programs which have attempted to relieve those problems have been characterized by the same values and attitudes that have bedevilled native and non-native relations in the first place.

With the best of intentions, programs have been developed by non-native people for native people which contain non-native assumptions about what is best for native people. They have not generally arisen out of the aspirations and perceptions of native people themselves. In the view of native people, these programs are born to fail, a telling irony in view of the dominant society's stereotype of native people.

Native people argue that the remedy for this chronic failure is the release of the energies of native peoples themselves to work on their own behalf. For them, this can only be accomplished by recognizing the right of native communities to determine their own destiny. In principle, the government finds this theory of development an acceptable framework to work within.

Indeed, the application of this theory has already created beneficial changes in a number of

areas. For example, in the area of child welfare, three native corporations have been established to provide child welfare services in native communities in the north. Experiences in other provincial jurisdictions have shown that native-delivered child welfare services significantly reduce the incidents of conflict and social disruption associated with the traditional non-native service delivery systems.

In the area of native education, a native-as-a-second-language program has been introduced, which will allow for the study of native languages to be integrated into the school day. Again, experience in other jurisdictions has shown that native children do much better in an educational environment that sustains and reinforces their cultures and languages.

Stopping there, if any members of the committee would like to come with me, they can visit Wandering Spirit School located in the riding of St. David, which is a native-run school, core-funded by the Toronto Board of Education. It provides native-based education that meets provincial standards. Again, it is an example in a small way of self-determination and a modest example of what may be meant by self-government and the concept of self-reliance.

In the area of policing, Ontario has worked with Indian organizations to create an Indian police commission to provide advice on the operation of the band constable program. The Indian police commission is designed to improve relations between police and Indian communities and to develop prevention programs on reserves.

In the area of economic development, the province has established a native economic support program under the Ministry of Citizenship and Culture. The province has also supported the development of the Indian agricultural program of Ontario and the Ontario Indian wild rice development agency. With native input, we also intend to develop a native economic development strategy for the province.

3:20 p.m.

I should tell members of the committee that Murray Koffler of Toronto has been the leader and founder of an organization called the Canadian Council for Native Business, an organization of Canadian businessmen who are prepared to make their resources and expertise available to native people in Ontario. I think the program is a significant and attractive one and involves the co-operation of literally hundreds of major Canadian businesses in personnel time. I look forward to seeing whether we can involve that council in developing and extending programs.

Furthermore, the policy framework I alluded to earlier expresses the government's commitment to a number of important undertakings and principles. These are support for the constitutional entrenchment of rights to self-government for aboriginal peoples; support for the negotiation of agreements with the federal government and native organizations on the implementation of aboriginal self-government in the province; support for the objective of increasing the degree of self-determination and self-reliance of the native people; support for the provision of native-specific programs and services, both to meet the particular needs of native people and to assist in the protection of native cultures; and support for the development of policies and programs respecting native people in consultation with native communities.

It is difficult to foresee just how these principles will work themselves out in concrete situations. Indeed, it may be unwise even to try. But through the means I have discussed earlier, the process will work itself to a conclusion. I intend to be actively involved in the discussion respecting the implementation of the principles. It is possible, on the other hand, to be somewhat clearer on the ways in which the government's commitment to undertake negotiations on aboriginal self-government will unfold. I would like to turn to this question now.

As I mentioned earlier, the issue of self-government is really a rubric covering discussions on both the powers and jurisdictions to be enjoyed by native communities and the means to be employed in assisting native communities to develop an economic base. Furthermore, in dealing with each of these elements, we are confronted by the quite different circumstances of native people on and off reserves.

Turning to the on-reserve situation first, we envisage the process of negotiations taking place under the aegis of the tripartite council chaired by the Indian commissioner of Ontario. I have recently joined with the Minister of Indian Affairs and Northern Development, the Honourable David Crombie, and with the four Indian nations of Ontario, to announce the appointment of a new Indian commissioner for Ontario, Roberta Jamieson, the first Indian to occupy that post in our history.

At the same time, the parties to the tripartite discussions have undertaken a review of the joint federal and provincial orders in council establishing the Indian Commission of Ontario. Our

purpose was to ensure that the mandate of the Indian commission is sufficiently broad to allow it a role in the discussions on Indian self-government. Having completed the review, the parties are satisfied that with minor changes the orders in council do indeed provide a mandate for the involvement of the Indian Commission of Ontario in Indian self-government discussions. Accordingly, the federal government and ourselves are preparing similar orders in council which will extend the life of the commission for another three years.

Finally, just before Christmas, on December 21, on behalf of the government of Ontario, I entered into a declaration of political intent with the federal government and representatives of the Indian first nations. This declaration expresses our mutual commitment to begin tripartite discussions to resolve issues relating to the exercise of jurisdiction and powers by First Nations governments in Ontario.

It is our intention to use the Indian Commission of Ontario and the tripartite process to facilitate these discussions. We anticipate that a general model of the powers and jurisdiction of first nations governments will be agreed to by the tripartite council. The negotiation of specific arrangements, however, will likely take place on a regional basis within the province. We have already received a proposal from the Nishnawbe-Aski Nation, which represents Indians north of the height of land between the Manitoba and Quebec borders, to begin negotiations on a range of subjects linked to self-government and we are prepared to enter into such discussions with them.

It is less certain how discussions on self-government off-reserve will evolve. My own preference, if possible, is to establish a forum parallel to that of the tripartite council where we can negotiate agreements with the federal government and the off-reserve native organizations. We have already had preliminary discussions with the Ontario Metis and Nonstatus Indian Association, the Ontario Native Women's Association and the Ontario Federation of Indian Friendship Centres on this matter.

Certainly, the process of negotiating agreements on aboriginal self-government in the province will be a lengthy one. I can easily foresee the need to proceed with an examination of the implications of aboriginal self-government for each area of provincial programming. On the other hand, the province must also consider the general question of how rights to self-government for aboriginal peoples can be entrenched in the Constitution and whether other rights should be entrenched as well. These latter considerations have as their immediate focus the first ministers' conference on aboriginal constitutional matters which is going to be held in 1987.

Given the range of activities we are embarking upon and given the scope of the issues confronting us, I have asked my staff to prepare a paper to assist the government in determining its position. It is my intention to consult with native organizations in the preparation of this paper.

In my remarks this afternoon, I have highlighted the commitment of the government to address the needs and aspirations of native peoples in the province and, may I add here personally, the needs and aspirations of native peoples as the native peoples see them. I have also conveyed my personal commitment to use the means available to me as minister responsible for native affairs to see that the needs and aspirations of our first people are addressed.

It is my profound hope that the processes we have embarked upon and the policies we have adopted will assist us after 118 years to move towards the equitable relationship which our native people in Ontario have sought for so long.

Mr. Shymko: To give credit where credit should be given, you are to be congratulated for some of the initiatives you have taken. You no doubt have, through your background and past activities, a very good sensitivity to and understanding of native issues.

Nevertheless, there are still great challenges ahead. I do understand that Ontario is providing great leadership on the constitutional question, of what will be discussed, for 1987. Unfortunately, that is not shared by other provinces; so it will indeed be a test of your skills to be able to convince other provincial jurisdictions to follow some of the suggestions and models you will be presenting.

However, I see this as one of the major areas of concern, and I certainly agree with you. There are some other matters that are perhaps not as universal or national in scope, but are geared more to day-to-day operations and services to the native communities, particularly the recommendations submitted by the Royal Commission on the Northern Environment. I would like to address some questions, to see whether you could reply to some of these recommendations.

First, as I followed your presentation, you seemed rather apologetic. You know you are not delivering services. You are just a co-ordinating body. As you kept dwelling on the nonservice

area, and the paralysis which seems to have set in, so you cannot manoeuvre in delivering things, as I followed along, paragraph after paragraph, I saw that you are indeed the czar for native affairs.

You have a great impact on how services will be delivered, and what services will be provided. I think there should be a qualifier to the apologetic nature of your inhibited responsibility, so to speak, as a pure co-ordinator. I think you have a lot of clout, and you know that very well. We all know that there is a centralization pattern. I would like to know whether that is the goal you will be setting up, because there is chaos out there.

We know there have been proposals in the past–and I will not be referring to any particular individual who had the portfolio of certain secretariats–by other governments to eliminate some of the duplications which exist.

3:30 p.m.

I would like to ask the Attorney General whether there is an attempt to centralize the native affairs branch within the Ministry of Citizenship and Culture and your responsibilities and issues that deal strictly with native affairs, education and the Ministry of Community and Social Services.

There may have been suggestions for centralization. I do not know whether creating a ministry for Indian affairs is the answer. I am confident the minister will be consulting with the native communities. Some are upset that he has not done so already, although the minister referred to having had a consultation. From reading the media, I note some native people were pretty upset they had not been consulted on some major issues, particularly the initiatives taken with the Nishnawbe-Aski Nation and the arrangements for the first step toward self-government.

I hope these criticisms were a little premature. It will take some time for native organizations to realize the co-operative nature of the Attorney General and the spirit with which he will be delivering his responsibilities.

I am sure the Attorney General is aware of the aspect of constant consultation and will continue to be sensitive to it, so we do not read statements in the media made by prominent people, such as Harry Doxtater, president of the Association of Iroquois and Allied Indians, who complained of no consultation. I want to read from the Globe and Mail dated October 30, 1985. I am sure the minister was just taking on his responsibilities then. Mr. Doxtater said native leaders should have a say in the process before becoming locked into a system, namely, a system that may become the model for what will be proposed at the conference in 1987.

There is fear that unless there is consultation, they will be locked into a model they will not have helped set up. I hate to be partisan. As you know, I rarely am partisan in my remarks. I am very reasonable. But when Harry Doxtater says, "The new Liberal government of David Peterson is dealing with native issues behind closed doors," it is frightening.

I hope your enlightened advice, the clout your position carries and the respect among your cabinet colleagues will influence the decision-making process in preventing such statements to be made by prominent leaders.

The same thing is reiterated by Earl Hill, chief of the Tyendinaga Indian Reserve and vice-president of the Association of Iroquois and Allied Indians. He said the memo of understanding and the negotiating process which you started with a prominent band of some 20,000 members will lock them in as a model to be used by the province for future negotiations.

I reiterate the humble views of a back-bencher who has been given the responsibility of native affairs and who, I must publicly state, was rather surprised to have been given only one day's notice to appear before the committee. I would appreciate at least two days' notice in future.

I understood the way things were scheduled, that the concerns of women, which normally would have been a priority in the order of this committee, would have preceded native affairs. I thought this would have been the logic followed by this committee and its very talented and able chairman. The critic should be given adequate notice of at least the order of things, to give weight to the democratic process and to approach seriously some of the major concerns of our society, namely, the natives. The critic should be given adequate time, and should at least be notified of the order of things. I want to file an objection that I am rather surprised things were precipitated the way they were.

If I continue with these responsibilities, perhaps I could be given more time in the future so that the quality of my criticism and the weight of some of the concerns will have more impact on the responsible member of the cabinet whose portfolio deals with these concerns.

I want to say something else as we talk about native affairs. Things that seem to be symbolic, insignificant and at times ridiculous to our colleagues, the use of a native language within

the House, is very important. Perhaps that is the reason I was initiated into the responsibility of critic for native affairs.

During the constitutional debate when we were discussing native affairs and important activities were being held in Ottawa, I recall that I made an effort–I do not want to pat myself on the back–and went to the native centre on Spadina Avenue. I spoke to the teacher of Ojibway and I prepared a speech in Ojibway.

When I delivered the speech, I gave a translation to the Speaker and to Hansard and there were snide little remarks. I am sure we get shocked into these things. Do you know that it is forbidden to use Cree or Ojibway in the Legislature? It would be interesting to see the reaction of natives when we contemplate giving weight to some form of authoritative action in the representation of natives within the legislative structure of this government.

I have been told by the Speaker that we will never be able to speak Ojibway in the House because the two official languages are French and English. I recall Italian being used in the past. I remember speaking Ukrainian and Polish in my maiden speeches and I am sure the clerk of this venerable committee recalls those moments. I recall members of the New Democratic Party, particularly the eloquence in Italian of the member for Oakwood (Mr. Grande) and the member for Dovercourt (Mr. Lupusella).

The request was made asking for the Speaker's permission and the unanimous consent of the House. Do you know there is a memo that I have never seen, circulated by Hansard apparently, which says that this is not allowed and will never be allowed?

I would like to ask the Attorney General, the cabinet and the Speaker to give consideration to the language of the first nations of Canada and of this province. If that is the policy of Hansard or some written secret memorandum, it should be reviewed. It may not be long before the member for High Park-Swansea will again meet with the teacher of Ojibway at the native centre and some day test this memorandum in the Legislature to the embarrassment of all members and this government.

3:40 p.m.

We speak of educational rights, of the services for the preservation of the linguistic and cultural heritage of our native peoples, of English as a second language that even non-natives can study, so that we give way to creating secondary institutions on reserves to give pride to the use of the native language. Yet, to the horror of the reality, this is forbidden. I or anyone else–I know the honourable critic from the New Democratic Party may be well-talented in speaking Cree or other languages–will be interrupted and prevented from speaking a native language.

That is an area of complete contradiction, when those who are charged with the responsibilities of being sensitive are prevented when that sensitivity and understanding are used. Yes, my colleagues, this is symbolical perhaps. What is symbolic, however, has great meaning to the native peoples, who for centuries have been disfranchised and have gone through periods of discrimination and bigotry to which no other minority can compare. Our record may not be as bad as that of the United States, but there are some horror stories. That issue should be addressed.

I hope it is not a cop-out when the Attorney General says he is just delivering or co-ordinating things. I hope he will continue to have the weight of his sensitivity and concern impacting not only on ministries but on such things as procedure relating to the House and the Speaker and that he can get rid of those secret memoranda.

I will tell you it is not only native affairs, but any minority group with a sensitive party in power, a government that is sensitive to those issues–

Mr. Callahan: Is that the 1958 memorandum?

Mr. Shymko: No. Apparently, this is some 1982-83 memorandum. I do not know. It could be somewhere.

Mr. Callahan: Probably 1982.

Mr. Warner: I have never heard of such a thing.

Mr. Shymko: I have records of conversations. There are telephone calls to the Premier's office. I could give you an entire 10 pages summarizing that entire fiasco, which I have kept to myself and officially raised for the first time here, using this opportunity with this committee.

It may be tested. Instead of testing it with Italian, we may test it with Ojibway. I would like to know what your views will be on the whole centralization process to eliminate that chaos.

Mr. Chairman: Excuse me. Is this relevant? Did you want to interject?

Mr. Callahan: I would not interrupt that speech on pain of death.

Mr. Chairman: No, I would not want to interrupt it either. When you raised your hand, I assumed it was a point of interjection. I would

not want to interrupt the member for High Park-Swansea (Mr. Shymko).

Mr. Callahan: He is at an all-time high.

Mr. Chairman: I remind Mr. Callahan that Mr. Pouliot will be in order following as we rotate in the normal fashion. I cannot take you, unless it is an appropriate interjection at this time. I am giving Mr. Shymko an opportunity to catch his breath. Then I am going to refer back to Mr. Shymko.

Just for the committee's understanding, the official opposition responds to the minister's statement, followed by the third party. Then we are open for the raised hand, which you so signified a few seconds ago, sir. Mr. Shymko, I do regret having interrupted you and I apologize.

Mr. Shymko: I am sure we may have freshman MPPs in this committee, but it would be rather insulting to remind them that the response from the official critic is never to be interrupted. I would think that everyone would know that. It is a sacred, unwritten rule, which I am sure is well understood.

To continue, there is a colleague on the opposition side, the member for Rainy River (Mr. Pierce), who apparently is seen, as are other members for northern Ontario, as a spokesman for some of their concerns. I just want to refer again to this question of consultation and the area of the status of the Metis, which is a dilemma.

I am sure it is very difficult, as you pointed out so well. It is quite a difference when you mention the difference in figures from the calculations and the census that has been taken. Even when you quote statistics, there is a great difference between 39,000 identified Metis and 185,000 identified Metis.

The question is not one of numbers and identification. I guess the definition is a problem. When you start negotiating very important aspects that will have an impact economically, socially and politically on this province and country, we had better know whom we define as being Metis. Obviously, the dilemma is there. I do not have the answer. Perhaps you can tell this committee what your approach to the definition would be in resolving this dilemma.

The Northwestern Ontario Metis Federation has written to the member for Rainy River and said this: "Thus far, the province, as evidenced by its conspicuous absence at our conference...." Imagine a conspicuous absence at their conference. They refer to the conference on the Constitution, of all things, which was held in Thunder Bay. Kenora we could have understood. It is much too far for a cabinet minister to travel to Kenora or Attawapiskat or some of the other places.

There are communications. For a conference on the Constitution held on December 15 or 16, to have no representation from Queen's Park is shameful.

They say "thus far," and this is December 31, and we are talking about 1985, just for the record. "The province, as evidenced by its conspicuous absence at our conference, has ignored the northwestern Ontario Metis and concentrated its efforts on aboriginal issues, on status and nonstatus Indians."

If we are seeking an answer, if we are seeking a definition, if we are trying to resolve this important dilemma, the first thing we should do is to consult and certainly attend such important meetings as a meeting and a conference on the Constitution.

Considering the weight the Attorney General has given to this issue and the prominence of the approximately five or six pages in his dissertation, I am surprised that the Attorney General, who co-ordinates–he does not deliver services but co-ordinates and is charged with the responsibility of the Constitution–did not find a member of the talented Liberal caucus to go. Believe me, he has talented people, as the former Ombudsman representative for northern Ontario, a man who is very aware of the issues, epitomizes. I can think of one ideal member who could have attended on December 15 and 16 and, I am sure, would have been overjoyed had he been given the opportunity to attend this conference. I tell you he would not have refused.

"This we feel," say the Metis, "reflects a lack of understanding by Toronto of the distinct history, culture and political aspirations of the Metis people." Interestingly enough, they say "Toronto," associating the Canadian approach to things, this government and the whole bureaucracy with the Bay Street, Toronto-oriented value and approach to things. That perception had better change and change quickly.

To conclude, they say, "We find ourselves at the 11th hour in our campaign for recognition in Ontario." I would say it is close to perhaps a minute before midnight, to be specific, if the constitutional conference is to be held to resolve and decide these things in 1987. It is not the 11th hour; it is much closer to midnight.

As Patrick McGuire Sr., the president of the Northwestern Ontario Metis Federation concludes, "Our campaign would benefit greatly from the Progressive Conservative Party raising

questions on our behalf in the provincial Legislature."

I am sure he would have said also the New Democratic Party, more so because of the clout, ability and perhaps subliminal influence it has on the present rather strange arrangements that were made in the summer of 1985–unique arrangements, unusual arrangements challenging the British parliamentary tradition, but I will not go into that.

I simply say that here is a Metis organization saying that its campaign for recognition would benefit greatly from the Progressive Conservative Party raising questions. This was on December 31, after all the initiatives that have been taken since the assignment of that responsibility to the Attorney General and after some of the things he has done and some of the announcements; yet that perception was still there. Something is wrong.

3:50 p.m.

It is not that I am saying this. It is not myself as a humble critic in an area of responsibility that I am not skilled in or totally familiar with. There is a great deal I will have to learn. If that is the perception at that stage, there is something wrong with the public relations aspect of informing these important organizations of the initiatives you have taken.

I would like to continue by asking a few questions. The media have analysed some of the approaches to the consultative process. They have, for example, stated in an article in the Ottawa Citizen, dated November 30, that the Metis and nonstatus Indians–and this is with reference to the strange situation of a document that was apparently leaked; you know which document I refer to, the one that was leaked from the cabinet–

Mr. Callahan: It is called the Titanic report.

Mr. Shymko: Is that the Titanic report?

They recommend that Metis and nonstatus Indians who are living off the reserves be guaranteed participation in the existing legislatures, school boards and other very special bodies. That strange document suggests that there be an attempt, a program, to guarantee participation of the native peoples in existing legislatures.

I am intrigued by this. There is a patronizing approach. and I know there is a question of perception. They do consider themselves a nation that is sovereign and independent vis-à-vis Canada. To be a member of the Ontario Legislature or the House of Commons would indeed involve a conflict, a recognition that one is not independent but part and parcel of another nation and government.

There is a dilemma. There are strong feelings about that. I would like to know what proposals or concepts you have of guaranteeing participation of natives in existing legislatures. We are discussing our boundary changes. Perhaps this would come about through an electoral boundary change or through the creation of an upper chamber. I do not know, but I would like to have some indication, unless it is a cabinet secret.

The document has been leaked, however, so our interest has been aroused. If you could perhaps describe what options, what possibilities are there, it is something that would be of great interest not only to myself as critic but to my honourable colleagues in this committee.

Even with regard to the question of school boards, we have seen a very important proposal that in an area where there are 300 francophones, Franco-Ontarians, a board with three trustees is automatically established. Is this the proposal you would give to the natives?

It would be interesting. Maybe there could be some proportion or figure that would not be 300. Does it mean establishing native boards of education on the same basis as we are doing with the Franco-Ontarians, creating boards of education for that very important sector of our society, one of the founding nations of this great country of ours? I would like to know what types of suggestions or options you are looking at in this area of school boards for natives.

The initiatives you are taking constitutionally have been taken very well. They were initiated by the past government, by the former Premier, Frank Miller, who attended such conferences in the past. The statement is there.

Regarding our position on principles in native issues and the Constitution, the principles are very close to those of the federal government, but they are quite different from those of Manitoba, as the Attorney General knows very well. Manitoba has proposed a much more expanded, more universal, more interesting set of principles compared to Ontario.

I have looked at a document from the federal-provincial conference of ministers, dated February 13 and 14, 1984. Our proposals are somewhat different from other jurisdictions. I am intrigued by Manitoba's proposal on certain principles. This is public knowledge. We do not have any leaks in the House.

Hon. Mr. Scott: I had better be careful.

Mr. Shymko: It is a very interesting document. I would like to know whether some

substantial changes will be made. I may be referring to it on other occasions in the Legislature. We do not keep secret documents in this party–not at this stage. Correct me, my colleagues. I am sure your deputy minister–

Hon. Mr. Scott: That document is probably not available to us if it was a policy document prepared for the previous government. I would be delighted to have a copy and I look to my friend to provide it at a convenient time.

Mr. Shymko: I am sure you do; if you do not have a copy, I would certainly–

Hon. Mr. Scott: There is an arrangement with the leader's offices.

Mr. Shymko: That is something we can discuss. I would have to consult my leader and my House leader about whether such information can be shared and should be shared. I am quite open about it.

Hon. Mr. Scott: We would be glad to look at anything else you took with you.

Mr. Shymko: Not everything has been shredded.

Hon. Mr. Scott: You may be busy with the machine.

Mr. Shymko: Credit should be given where credit is due. The Toronto Star, of all papers–this is not the Toronto Sun that we are talking about–said Premier Frank Miller agreed at the first minister's conference last spring "to negotiate agreements on self-governing institutions with aboriginal peoples that are appropriate to the particular circumstances of those people," etc.

We did initiate. Give us credit for some of the initiatives we have taken including, in an area of importance, the children's aid society and the changes in the Child and Family Services Act. I recall Bill 77. It was a process that took five or six years. I remember the then minister, the Honourable Frank Drea, and the initiatives he took, after a great deal of consultation in committee, to create the autonomous authorities and native children's aid societies which you are now continuing to develop.

Since you made reference to this in your presentation, could you tell me how many such authorities exist? How many do you have operating? There was a suggestion in the Kenora area. The Weechi-it-to-win organization, which was to replace the children's aid society, is a model to be used. How many such authorities are operating now? With how many are you negotiating the establishment of independent autonomous native children's aid societies? This is a crucial area where we took initiatives and we hope you will continue in that direction.

Economic development is crucial, but every native organization will tell you that the only solution to this dilemma with the natives is self-government. They must have ownership of land, not rented land, so that we do not have the paternalistic approach which has for centuries characterized the relations of both federal and provincial governments. They should have not only the ownership of the present land, but bordering lands–expansion, acquisition of more lands, rights to both surface and underground resources and wealth.

There are some interesting questions I would like to have the minister answer. This is very important before I forget. I do get senile once in a while.

Mr. Chairman: I do not want to interrupt your flow of thought. As soon as you can, would you give the floor to me for a moment?

Now that you have given me the floor, could I remind the member for High Park-Swansea, as well as the other members of the committee, that protocol in the committee normally calls for the responses on the part of the critics to be approximately the same as the time taken by the minister in making his initial statement.

I am not a clock-watcher by nature. However, I do make notes with the able assistance of the clerk, and the minister took 23 minutes. I have given the member for High Park-Swansea 30 minutes up until this point. The minister must leave at 4:30 p.m. I want to hear from the third party and give them approximately the same consideration I am giving to the official opposition.

Mr. Shymko: Mr. Chairman, before you continue, it is my understanding that there are two hours scheduled for native affairs.

Mr. Chairman: Exactly.

Mr. Shymko: I do not think we started at 3 p.m.; I think we started some minutes after 3 p.m.

Mr. Chairman: It was 3:17 p.m.

Mr. Shymko: As far as I am concerned, and I hope the critic of the third party agrees, I think it is unacceptable that when these two hours are offered, the minister should leave at 4:30 p.m. and deprive us of his presence. I am sure the Attorney General would not do it. It would certainly be a gesture that would be insulting to the statements he has made about sensitivity. If this is a democratic process, there is no way.

4 p.m.

Mr. Chairman: Can I have the Attorney General respond to the query?

Hon. Mr. Scott: Yes. I indicated to the committee yesterday that I had to go to Ottawa. If the committee will permit, my intention is to ask the committee to stop at 4:30 or 4:25 so that I will be here for the full two hours.

Mr. Shymko: That is different.

Hon. Mr. Scott: I had hoped we could get the statements in today and do the rest later.

Mr. Chairman: Again, I say to the member for High Park-Swansea, he is very sensitive to these points and understands them well. It would be appropriate if you would wind up in some fashion that would be acceptable to you. Then I can turn the floor over to the third party.

Mr. Shymko: I could go on and on.

Mr. Chairman: I know.

Mr. Shymko: I have a number of questions and issues. It is unfortunate that we are placed in a straightjacket through the structure of our deliberations in an area, as the Attorney General pointed out in his opening remarks, which is so important.

There is something wrong with the system when the two opposition critics cannot have the flexibility or the opportunity to air some of these concerns. It is almost like putting a muzzle on us. I do not blame anyone; it is the system. However, I think we should find a solution to this dilemma. I am sure it is found on the estimates in every committee.

Mr. Chairman, I accept your request. I will wrap up. However, I want to say that it is frustrating when one cannot continue, not eloquently but sincerely, to evoke some answers and responses to some of the concerns.

I was speaking about sovereignty, land and resources. We have the Bear Island caution. The Attorney General is well aware of this, having been a professional in the legal profession most of his adult life. To my understanding, you have the claim rights to the land. There is a caution clause which was registered by the Bear Island band in an area that encompasses a very large portion of the territory in northern Ontario. Geographically, I would imagine it would be the southwest portion of the Timiskaming riding. Who is the representative for Timiskaming? It may well be Mr. Charlton.

This particular clause is very important. What has it done? It has literally frozen minerals, land, tourism and other developments. It went to the courts. I think there was a 1981 decision which has been appealed by the band. Where does this appeal now stand? Have you negotiated any deal to remove this caution clause from the land? Basically, has your position been finalized in any way on that appeal?

Other issues I want to address relate to more details on your position on the nonstatus Indians and Metis as I have mentioned to you, especially in light of the fact the western provinces have a different approach. Is your approach on this question of the Metis and nonstatus Indians the same as that of some of the western provinces? Would you give land to the Metis? Would you be proposing a cash settlement in some of the negotiations that will probably follow?

In another area, will you resurrect–if I may use the term–the fishing agreement which was a dilemma to one of the former candidates for the leadership of our party and a former Attorney General who had responsibility for that portfolio? I remember it was a dilemma for a number of years. Are you planning to resurrect that fishing agreement? What is your stand on that?

I could go on with a number of questions, but because of the plea of understanding from the chairman, who was very reasonable in his request, I certainly concur with that. I will listen to the answers from the Attorney General later on and allow the critic from the third party to proceed now.

Mr. Chairman: Thank you. Hansard will note that there was a very significant round of applause from two members of the committee.

Mr. Shymko: They were both Liberals.

Mr. Chairman: I will now turn to the member for Lake Nipigon (Mr. Pouliot) for his remarks.

Mr. Pouliot: Merci, Monsieur le Président. I certainly want to commend you on your flexibility as well as for your sincere and deliberate attempt at having fair play become the order of the day.

Being a novice and somewhat naïve, it is difficult for me to comprehend from time to time that in the spirit of decorum and good manners one need not have aspired to becoming a mathematical genius with a licence or a degree from Harvard or the Massachusetts Institute of Technology to break things into three. When we have an insufficient amount of time at our disposal, we can readily divide by three.

Of course, it is very difficult when you are told you are very verbose and very eloquent, that you entertain the fan club in the gallery and that your record reads like a litany of sins and omissions. Far more time should be allocated to reviewing the records of the past government in Ontario.

Having said this, in a more serious tone, may I welcome the Attorney General to his new portfolio, which encompasses the responsibility for native affairs. I am sure our first Canadians are looking forward to discussions with his ministry.

Having said this, I must admit I am somewhat disappointed to study your documents and your leadoff statement. With due respect, I find it to be tentative and defensive. In keeping with the spirit of the Attorney General's office, I find it to be a document that does not apologize. I fail to see the kind of political will and political intent that a document of this nature should put forth.

It gives us a sense of déjà vu. You spent fully half the document telling us about an ambiguous mandate. The word "co-ordination" is repeated or substituted many, many times. As in past practice, it is an invitation to a bureaucratic maze where we see tales of Houdini. Native Canadians or, more specifically, first Canadians, see difficulties in relating to the terms of reference and they lose faith.

I wish we had more time. We see that we do not have a ministry of native affairs; we are not there yet. You have expressed some fear that to do so would perhaps parallel another jurisdiction, that it might create a degree of uncertainty and some fear with the native Canadians. I do not buy that for a minute.

4:10 p.m.

You have a responsibility. If you mean what you say–and you have that power and a good deal of clout with the government; you are the government–you could initiate discussions with your colleagues so that one day subject matters that affect the aspirations and livelihood of our first Canadians could be dealt with more promptly. You could expedite matters and cut the red tape.

I am repeating myself in saying there is hope for a new beginning where the people will trust you. Writing letters of commendation to a minister of the crown is not my forte, but we feel things are on the upswing. In fact, Shelley Spiegel, special assistant to the minister responsible for native affairs, tells me the minister is quite proud of what has been accomplished in his six-month tenure of office. She issued an invitation to a luncheon, not a dinner, meeting. So I can readily attest things are looking up. I will deal with this later.

The records of the government in dealing with our first Canadians are nothing short of abominable. I do not want to philosophize; it is not my role. Suffice to say if we were to judge a civilization–and we pride ourselves in being very much that–we have, or should have, the resources. If we draw a parallel or an analogy and use as a common denominator the way we have treated and cared for our minorities, specifically our first Canadians, because we are our brothers' keepers to a large extent, then there are degrees of success and failure. I think we have failed.

We have a situation among our first Canadians, status and nonstatus, among our Metis population as well, that rivals the conditions we notice in the Third World; it is nothing short of that. Although commendation is in order for having concluded long and arduous negotiations, I am referring specifically to the social crime which is nothing short of the highest order involving the Islington and Grassy Narrows bands, the mercury in the English and Wabigoon rivers. I think it safe to say that in terms of social crime, it is the worst crime ever committed against the people of Ontario. It is nothing short of systematic negligence for the mere sake of a buck.

It took 15 years to address a situation that, under any other circumstances, would have been recognized readily and dealt with by our court system so that negligence, delays and the changing of complete negotiation teams for new ones that knew little of the subject matter being addressed could have been avoided. In the meantime, native people became desperate.

Not only had we allowed companies to poison them, knowing full well what was going on, but once the tragedy came to light, we were just as equally negligent. I say this regardless of political party. We did not mean what we said. We did not do anything even at the duty level. We did not exercise any mandate.

It is little wonder–and those are just examples–when we talk about our first Canadians, we have a lack of trust. It is only too convenient for us to say that when we enter into negotiations we will begin to mean what we say. We call it a fresh approach. Little wonder that we find, aside from the Nishnawbe-Aski treaty number 9, others are not ready. We have cultivated a climate of suspicion. We have not cultivated the right atmosphere, the right climate conducive to good negotiating order.

I am appalled and shocked. I could take a long time telling you about what needs to be done. Suffice to say time does not permit. I note there are negotiations among the three parties, but we have just two hours to look at what needs to be done. There is a vacuum you will never quite fill within your mandate, like a rabbit you will never

quite catch. There is so much to be done because of neglect, because of abject poverty, not just poverty.

I invite you to come to Lansdowne House to see the conditions. I invite you to come to Muskrat Dam, when the temperature is something like 40 degrees below zero. There is one pay phone in the year of our Lord, 1986. Some of our elders, some of our senior citizens, are clutching a handful of change in a rolled-up sock, lining up to make a phone call because there is only one pay phone.

This is a community. There are communities that work. They do not incite revolution. They are peaceful people. However, by virtue and reason of their isolation, their remoteness and the numbers game, they are left to care for others.

One should go to Fort Severn, the northernmost community in Ontario and experience first hand what is taking place with our elders. Then one should travel south to Big Trout Lake, a community of 1,000, the largest reserve north of the 50th parallel. We are asking Mrs. Anderson to leave her community after having lived there for 60 or 70 years because we have no accommodation, no seniors' home, in Big Trout Lake.

Those are the subject matters that should be addressed, I suppose, in terms of priority. I am not saying the two cannot be done in a parallel manner. We talk about self-government, we talk about political intent and we have political will. People are coming back and saying, "Nice speech, but what did he say?"

You have that power. If not within the meagre dollars in your ministry, you have the duty and the power to go to your colleagues. Whether you do it as a vehicle, through the mechanism of a new ministry, you have that power to deliver the goods to the same extent and with the same sincerity that you do to others.

Services that we take for granted are not the order of the day; they are the exception. Jurisdiction up to grade 8 over education is a federal matter. In a community of 1,000, I would hazard to volunteer a guess that 50 or 60 per cent may be of school age. In a community of 1,000 in Big Trout Lake, however, people are uprooted after grade 8.

There are no facilities for grades 9 and 10. That is within provincial jurisdiction. We would not hesitate anywhere else; it would be something that is guaranteed and, therefore, it is a service that we do have access to. It is the small things, the things that are taken for granted elsewhere.

With all due respect, one must not be afraid to give too much because of the capacity to assimilate and digest. You have some latitude here. You have given so little, however, it is little wonder that people are not very receptive and that it is difficult for them to understand.

At times our patience is taxed with platitudes, nothing short of platitudes, such as providing simultaneous translation in Cree and Ojibway so that we should become a reasonable facsimile of the United Nations. These are bread and butter issues, but there is no encouragement. There are no dollars for essential services, for medical services, for educational services for our senior citizens.

From the time you are born until the time you die in that area, your aspirations are usurped. They are just not there. You do not have the climate. This is the challenge you must face.

4:20 p.m.

I had prepared a text, but I cannot repeat it often enough. I have not had the opportunity this time, but next time I hope that we have more than two hours. It is an insignificant amount of time. The problems there are immense.

You have quite a challenge. I am very happy you are in consultation with the people from Nishnawbe-Aski. They believe in what they say. Let it be a prototype for future negotiations and a better understanding between our native Canadians and the government. They have aspirations. You will find their proposals are reasonable and workable. I encourage you to follow suit.

I do not want to make your position more difficult. I do not know how those things are done, but I would like perhaps not to participate, but have the capacity of an observer. I will leave it with you in those negotiations that will follow at Nishnawbe-Aski.

I am not being political, but 20 per cent of our population in the riding of Lake Nipigon, the largest riding in Ontario, are Ojibway. Two per cent are Cree. The Board of Internal Economy would remind everyone that we are the most expensive riding to service.

Again, by way of illustration, sitting here, we are closer to Miami, Florida, as we discuss the lack of facilities of our first Canadians, than we are to Fort Severn in the riding of Lake Nipigon.

Hon. Mr. Scott: Before we go, we will resume, I take it, on Tuesday. I appreciate both speeches. I am attracted by the proposal the member for Lake Nipigon makes, which is an invitation to enable him to participate in some fashion in the negotiations with the Nishnawbe-Aski nation. He has a special claim because, as

he says, those people are his constituents in large measure.

I would be prepared to consider, if it can be developed, that we do the same for both parties. I accept what the member says about the challenge. I do not regard this portfolio as a partisan obligation. The obligation of all our political parties to our first nations is equally shared. There are certain risks in opening the books. There are certain risks to open participation. It can make question period unpleasant.

If we can work it out, I am quite prepared to accept those risks in respect to the native affairs portfolio because it is generally understood, leaving the past behind us, that we have an opportunity to make a fresh start without any recriminations among ourselves. I will be glad to consult with both critics as to how that can be done during the next year to develop what is required, if any progress is to be made, a nonpartisan approach to native affairs problems. I am grateful for that suggestion. I would like both critics and their parties to think about it. As far as I am concerned, if it can be done it should be done.

Mr. Chairman: Does the Attorney General wish to respond to any questions?

Hon. Mr. Scott: I have to go to Ottawa, unfortunately. May I make one observation about a difference I have with both the critics? It is worth setting out so that next time we can have some discussion about it.

I am speaking, not of the duty in the portfolio to provide the social services that my friend addressed last, but about a general approach to native problems in the province. Our approach, traditionally in Ontario and the other provinces, has been to develop programs to be applied to native peoples. When we are really sophisticated we consult before we develop the programs and then apply them. That is what I tried to refer to as the born-to-fail mechanism.

What we have to do in the long run, not overlooking the challenge my friend has given me to deal with precise bread-and-butter questions now, is to develop a reticence about developing and imposing programs. We have been doing that for 100 years and it has never worked. We have to allow the native people to develop their own programs.

When my friend the member for High Park-Swansea (Mr. Shymko) asks what my program is, my answer in the broad sense is I have no program and I do not intend to have a program in that sense. I intend, so far as possible–leaving aside the bread-and-butter issues–to listen to the native people and to give them what assistance I can and the government can in devising what is best for them. That is what self-reliance is all about, that is what responsibility is about and in the end that is what self-government is about. That is a very important approach to the issue.

I remember 20 years ago, when we were having problems with Quebec, everyone asked, "What does Quebec want?" They did not know then. They found out soon enough and told the rest of Canada. We are in the same stage with our native people. If you ask them what they want, to a very large extent they cannot always respond with the same level of sophistication of detail. However, we must assist them in developing for themselves a sense of what their needs are, what their policies should be and then allow them the freedom to have that.

In the long term, I think that is going to be the real challenge. The real challenge is not in the long term to devise and impose a program; the real challenge is to allow the native people to devise their own programs for themselves.

I look forward next time to discussing these issues with the committee.

Mr. Shymko: Perhaps I could commend the Attorney General for that nonpartisan approach. One of the things we should look at is expanding from two hours the deliberations on native affairs in future estimates that may be scheduled if there is unanimous consent. Also, I ask the Attorney General whether information dealing with native affairs could be effectively passed on to the two critics. Whatever he feels should be given would really be appreciated. I want to commend him on that approach.

Mr. Chairman: I do not want to delay the Attorney General. I know the position he is in, having been there on occasion myself. He can exit as I am going to do a couple of–

Hon. Mr. Scott: Scheduling discussion?

Mr. Chairman: I know that is not of serious interest to you at this time. Relative to the questions raised by both critics on the length of time for this committee and for any new members, let me again simply state that the hours established for discussion on a particular portfolio arise out of the deliberations of the House leaders. It is not a committee decision. I know Mr. Shymko and Mr. Pouliot are aware that it is not our decision to make here. Please carry the message back to your respective House leaders. I am sure members of the government party can do the same if they share those concerns.

Mr. Shymko: Before the minister leaves, could we get some of the answers to questions raised today?

Hon. Mr. Scott: I will be able to respond the next day to most of those.

Mr. Chairman: The minister will be back on Tuesday following routine proceedings.

Mr. Shymko: The two critics will be absent. They will be out of the country next Tuesday. I would appreciate an opportunity now, if there is still some time left on estimates.

Mr. Chairman: That creates some problems. Mr. Warner and I have almost a fetish about cleaning these things up and bringing them to a conclusion. The solution I had was to take two hours, from 3:30 to 5:30 on Tuesday afternoon, invite both gentlemen back for approximately the last half-hour, 5:30 to approximately six, then we will have completed both of these areas.

Mr. Morin: We are not sitting tomorrow?

Mr. Chairman: No.

Mr. Chairman: Having concluded the business of this committee for this afternoon, we will adjourn.

The committee adjourned at 4:30 p.m.

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Ontario

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Legislative Assembly of Ontario

Standing Committee on Administration of Justice
Estimates, Ministry of the Attorney General

First Session, 33rd Parliament
Tuesday, January 28, 1986

Speaker: Honourable H. A. Edighoffer
Clerk: R. G. Lewis, QC

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, January 28, 1986

The committee met at 3:57 p.m. in room 151.

ESTIMATES, MINISTRY OF ATTORNEY GENERAL
(continued)

Mr. Chairman: We have representatives from all parties here. In the interest of time, since we are starting a little late, I would like to get under way.

We will be dealing with vote 401, office responsible for women's issues, items 1 and 2. We have supplementary estimates, numbered pages 11 and 12, which I believe have been provided to you. Perhaps we could begin by having the opening statement delivered to you by the Attorney General.

Hon. Mr. Scott: Mr. Chairman and members, as minister responsible for women's issues, I am pleased to be here to discuss with you the estimates of the office which include the Ontario women's directorate and the Ontario Advisory Council on Women's Issues.

As an agency of the provincial government, the directorate has been central to the government's focus on women's issues in both the public and private sectors. The directorate has built a framework for lasting partnerships with industry, business, the Ontario public service and community groups. These partnerships are built on co-operation and open consultation. The directorate has identified issues and programs that require revisions and improvement in order to foster economic and social equality for women.

One major achievement of the directorate is the green paper on pay equity. The Ontario government is determined to implement pay equity in both the public and private sectors of the economy and has accorded it high priority. It is a measure that all political parties in this province in one way or the other have supported since November 1983.

Under my direction as minister responsible for women's issues, a green paper containing implementation options for pay equity in the private sector and the broader public sector has been developed by an interministerial task force. In addition to the efforts of the Ministry of the Attorney General and the Ontario women's directorate, the task force included senior representatives of the ministries of Treasury and Economics, Industry, Trade and Technology, and Labour, as well as of Management Board of Cabinet, the Civil Service Commission, the Office of the Premier and the Cabinet Office. The green paper examines a number of issues related to the concept of pay equity, as we now call it.

More than two million Ontario women currently are in the work force and earn, on average, only 62 per cent of what men do. There are many reasons for this, including outright discrimination in some cases, relative hours of work of males and females, traditional career choices of women and historical undervaluation of jobs done by women.

Our objective in introducing equal pay for work of equal value in the private sector and broader public sector is to promote pay equity. The green paper was tabled on November 19 and public consultations will begin on February 10. The advice offered in these consultations will assist the government in developing the legislation for pay equity. The public response to the green paper has been one of tremendous interest to date. More than 15,000 copies have been requested and distributed to individuals and groups since its release in November.

Economic equality will be obtained only when men and women are treated and regarded as equals in the work place. A major step toward achieving this was made last year with the Abella report on equality in employment and the subsequent adoption of the term "employment equity." It is a broader term than affirmative action and describes a much wider range of initiatives that work towards the establishment of genuine equality in the work place.

This government regards the widespread acceptance of employment equity as critical to the legal and economic wellbeing of women in Ontario. This year additional employment equity incentive funding of $1.8 million has been made available for employment equity programs in the public hospital sector, Ontario universities, Ontario College of Art, Ryerson Polytechnical Institute and the Ontario Institute for Studies in Education, as well as in municipalities and school boards This additional allocation brings the amount available to $3.96 million for the

development of employment equity programs in the public sector.

Public hospitals and universities are eligible this year to apply for funds to cover a range of employment equity initiatives, including demonstration projects, consulting assistance and employment equity co-ordination. Special one-time grants are available to enable them to do a work force analysis or a needs assessment as a first step in developing employment equity programs.

The incentive funding for hospitals is being administered by the Ministry of Health. Officials from that ministry and from the Ontario women's directorate are working closely with the Ontario Hospital Association to foster hospital programs. The consultative services branch of the directorate provides public and private sector employers with training seminars, practical manuals, information packages and audio-visual presentations on employment equity.

To honour those employers who have demonstrated outstanding leadership in the development and communication of policies and practices which ensure employment equity for women, an employment equity awards dinners organized by the directorate was held in Toronto last fall. The four 1985 winners were Manufacturers Life Insurance Co., Toronto Board of Education, Westinghouse Canada Inc. and Mutual Life Assurance Co. of Canada.

Each of these award-winning employers has shown commitment to the principle of employment equity. They have taken effective action to implement the principle and have monitored the results through an established system. Noteworthy achievements of these employers include an increase in the number of women employees and the number of women in nontraditional positions.

The directorate has also developed an employment equity policy statement which the Premier (Mr. Peterson) personally asked employers at the awards dinner to sign. Employers who sign the policy statement agree to support employment equity and the equal treatment principles of the Ontario Human Rights Code within their organizations. The statement has been sent to all Ontario employers with more than 100 employees for their endorsement.

Specifically, it commits employers to regularly review and evaluate employee hiring and promotion procedures to ensure that selection criteria do not inadvertently limit opportunities for women. It also states the employer will identify and change human resource policies and practices that may prevent or limit equal employment for women in hiring, promotion, training and working conditions. The employer agrees actively to seek qualified women and encourage them to compete for available positions and training opportunities.

In addition, the employer ensures that progress is made in recruiting and promoting qualified women into job categories where they are underrepresented. These employers also act as leaders in employment equity by communicating their policies to staff and the public.

The consultative services branch of the directorate has initiated assistance programs for those who want to begin employment equity programs. The branch so far has presented six in a series of 10 workshops on employment equity for the beginning practitioner. These workshops provide a comprehensive review of the components of employment equity and combine the presentation of information with participatory discussions by employers.

We are now on page 12 of the copy I submitted. Much of what follows between page 12 and page 25 will be familiar to those who were present for the Attorney General's estimates.

Mr. Chairman: It is page 6 of the sheets that you have in front of you.

Hon. Mr. Scott: Will you join us on page 12.

Another economic initiative that came to fruition this year is a program I recently announced called the business ownership for women program. The average full- and part-time employment created by female-owned firms is 5.57 jobs. It makes good economic sense to encourage women to start up their own businesses.

Before we undertook to launch this program, the Ministry of Industry, Trade and Technology, in co-operation with the directorate, consulted widely with women entrepreneurs. They talked with small business owners, representatives of women's business associations, such as the Canadian Association of Women Executives, and consultants to small business owners to find out what they wanted us to do for them.

We were told that an appropriate role for government was as a counsellor and information broker. They needed our assistance in providing the tools to let them get on with the job, to coin a phrase. Accordingly, a $30,000-conference incentive fund has been provided for community groups in London, Ottawa, Sudbury and Thunder Bay. This money will enable community groups to set up conferences for women interested in small business ownership. The proceeds of those conferences will be left with the communi-

ty groups to finance future initiatives in support of women entrepreneurs.

In addition, eight seminars on how to start a business, specifically designed for women, began last October. They will continue until March 1986. Seminars will be held in Sarnia, Windsor, Whitby, Kitchener, St. Catharines, North Bay, Peterborough and Kingston. The seminars already held have been extremely well received by those attending them. I look forward to the same positive results from the forthcoming conferences.

Yet another stumbling block to the achievement of equality in the work place is the problem of adequate, affordable and available child care. The Ontario women's directorate, in consultation with the Ministry of Community and Social Services, has precipitated this government's allotment of 10,000 day care spaces as specified in the budget. As stated in the budget, improved child care programs are required and new approaches are currently under review.

Another major success is the new child care centre at Queen's Park, which opened in January. This centre will be able to accommodate approximately 56 children from infants to preschoolers. This centre, along with five other existing centres in provincial government facilities, will serve as demonstration projects. The Queen's Park centre, like the others, will be self-supporting. The government is providing space in a public building and some startup funding. We hope these six centres will encourage other employers to set up work place based child care for their employees.

A work place child care co-ordinator has also been appointed within the Ministry of Community and Social Services to co-ordinate the development of further Ontario public service child care centres. Adequate child care is a problem that we as a government cannot ignore. In 1984, 56.5 per cent of women in the Ontario labour force had a child under three years of age, and 63.4 per cent had a child in the three-to-five age group. These mothers, many of them single parents or from low income, two-parent families, require some form of child care.

Just as important as the need for adequate child care to allow women to close the economic and social gap is the need to realize that social and economic disparities intensify the plight of battered women. The family violence unit of the women's directorate co-ordinates initiatives which address this problem.

4:10 p.m.

In Ontario there are 70 emergency shelters available for battered women who need to leave a dangerous situation. In addition to these shelters, eight new transition homes or family resource centres are now in the early planning stages. Five of them will be located in small urban centres–two in the northern part of our province and one in Metro Toronto to serve the special needs of our immigrant population. By the end of next year, there will be 81 shelters in operation across Ontario to provide support services to battered women and their children.

Work is also being done within communities to assess the value of establishing safe homes or safe locations in some of the more isolated centres. These are not intended to replace shelters but provide emergency refuge for one or two nights until women and children can be moved to shelters in larger communities.

In recognition of the special needs of battered women in isolated areas, the Ministry of Community and Social Services has provided financial support for additional crisis telephone lines. These lines link women in these regions to services available as close to their own communities as possible. In addition, emergency transportation, which will enable women to get to safety when required, will be paid for by government through present negotiations with shelters. No woman, unable to pay, will be turned away.

To assist battered women through legal measures, the Ministry of the Attorney General is developing a model for a victims' witness assistance program located in crown attorney offices throughout Ontario. You will perhaps have read in the press about the plans for that model in the new Ottawa courthouse.

Yet statistics still show our society's unwillingness to face the reality of wife assault. Only 10 per cent of abused women seek help from agencies and then only after repeated violence. On average, a women is battered 35 times before the police are notified. Even then it may be a close relative who makes the contact and not the battered wife herself.

Injuries result in bruises, cuts, broken bones and even death. Wife assault is responsible for 60 per cent of all female murders in this country. Wife assault cuts across all social, economic and ethnic boundaries. No community and no social strata are exempt. The tragedy is further compounded by the effect of violence on children. They see violence in the home. The psychological effects are as damaging as if the children are themselves actually being hit. Studies show that girls are likely to grow up accepting abuse and

boys are likely to abuse others. They are victims of a cycle.

This makes public education extremely important in helping to break this cycle. In November the women's directorate ran a month-long "break the silence" public awareness campaign highlighted by two television commercials. The commercials are aimed at breaking the silence of battered women and the batterer. These commercials are the first television commercials produced in Canada to expose the batterer's point of view.

The message in the first commercial is clear–wife battering may begin gradually but can end in tragedy. The second commercial focuses on the implications of wife abuse on children in abusive homes. The commercials were intended to mobilize the public to call for information and help.

To assist the public to respond, seven regional crisis telephone lines were installed. These 24-hour lines were linked directly to local transition houses or support services. During the commercials, these numbers appeared on the television screen. Information about the help available was provided by trained staff and volunteers answering the telephones in each region.

A follow-up to the campaign with transition house workers indicates a successful increase in awareness among the public of the criminal nature of wife assault and in provision of information regarding assistance to both victims and batterers.

Another measure to assist women who are victims of violence is the government's $150,000 contribution towards the establishment of five new sexual assault treatment centres across the province. These will be in addition to the three operating now in London, Hamilton and Toronto. These centres will be set up in co-operation with local community groups, hospitals and police. In determining the location for these new units, we will be guided by the advice of district health councils and we will ensure that each region of the province is served.

Women are often forced to remain in a tangled web of physical, emotional and mental abuse because they rely on their partner for food, shelter and clothing. Battered women often lack economic independence. The government, recognizing this difficult situation, is determined to address economic inequality. Employment equity is one way to begin.

I would now like to review the ongoing results of the employment equity programs within the Ontario public service. They are indeed a success–not perfect, but a success. Their success provides active role models for the private sector.

At the end of 1984-85, women in the Ontario public service earned almost 77.8 per cent of men's average earnings, compared to the 62.3 per cent average in Ontario. This is a significant step forward and something on which we can build. Ontario has twice as many female executives as the federal government, 11.2 per cent. However, there is still the need for greater progress in the public service, particularly in nontraditional areas such as law enforcement, senior management, engineering and technology.

To further strengthen the program and increase the gains made to date, ministries have been asked to address areas where results have been slow. Each ministry will be expected to contribute towards corporate areas of focus as well as to undertake special ministry initiatives.

I would like to review some noteworthy achievements as a result of the employment equity program in the Ontario Civil Service Commission.

Female representation has reached 32.2 per cent in the administrative module, one of the key feeder groups for senior management. This represents an increase from 19.9 per cent in 1978. In addition, the administrative services category has surpassed the 30 per cent goal and currently has 30.4 per cent female representation. This category is an important bridge between clerical-secretarial jobs and management positions.

Women's representation has increased in the senior executive group to 11.2 per cent, which is an increase of 5.6 per cent over four years. I would like to point out that accelerated career development is being provided to more than five per cent of women in the service annually, over and above ongoing staff development activity. Approximately 8,000 women have participated in accelerated career development opportunities to date.

Secretarial and clerical jobs have been reviewed by the Civil Service Commission, and a new classification system, which would benefit the majority of the 14,000 women and 2,000 men in those groups, was announced by the chairman of Management Board of Cabinet (Ms. Caplan) on January 6.

On a similar front, one of the thrusts of the province, through the women's directorate, is to actively encourage young women to pursue courses and training programs that will lead them

into nontraditional careers. The directorate now has a registry of 250 volunteer women in its open doors program. These women, who have nontraditional careers, act as role models for students by visiting schools.

The original target of grades 7 and 8 has been expanded to allow access to the registry by grades 4 to 10. More than 2,200 students have been reached; evaluations provided by teachers, speakers and students have been consistently positive. The program is under way in six centres in the province.

The directorate provides orientation and information sessions for women in the registry and for teachers in the six centres. Employers are encouraged to support this initiative by giving their female employees time off to deliver their classroom presentations.

The open doors program gives students a realistic range of career options and helps them realize that math, science and other basic subjects are often prerequisites in the new technological labour market. To support the importance of math and science, the directorate premiered the film Here Today, Where Tomorrow? on November 15. The film was produced for the directorate by Galacom Media Corp.

4:20 p.m.

The film deals with the problems teenagers face when selecting courses in high school and preparing for jobs in an uncertain future. The story-line is backed by actual filmed discussions of high school students voicing their opinions on math and science courses, relationships and their futures. It is available from the resource centre at the directorate; details for province-wide distribution through TVOntario are being finalized.

An equally important consideration to preparing for a changed labour force is training and retraining. The school-to-work transition is a very important focal point for strategies relating to youth employment. The directorate has advocated the enhancement of school guidance counselling programs for female students to ensure that young women are made aware of the wide range of options, including nontraditional occupations, for their career choices. The directorate also advocates the expansion of the co-operative education model to provide work experience as well as classroom instruction.

The directorate has identified areas related to training that are particularly relevant to women. These include equal access to training, training of part-time workers and linkages between training and industry, particularly in the context of technological change. Also important are increased flexibility in training programs and access to those programs, training-related child care centres associated with community colleges, technical institutes and schools and child care allowances for women attending job training programs sponsored by the government.

The directorate is represented on provincial training committees to ensure that the perspective of women is fully integrated into all training initiatives. The directorate is also represented on the program design and negotiation committees that were established to develop provincial input in the federal government's announced $695-million new labour market strategy. This strategy includes new training and employment programs as well as the consolidation and rationalization of existing programs.

In my opinion, two groups in particular need of training and retraining are immigrant and visible minority women. The directorate has given priority in its community grants to projects benefiting visible minority and immigrant women, older women and women in the north.

In our recognition of the special needs of visible minority and immigrant women, we are working with both the federal government and other ministries to address their concerns. Ontario will be presenting a special report on the province's initiatives to the federal-provincial-territorial meeting of ministers responsible for women's issues in June. Prior to June, I will be consulting—and consulting again in a number of cases—with representatives of those groups.

In addition, the women's directorate is now represented on the cabinet committee on race relations, of which I am chairman.

At this point, I would like to refer to the work the Ontario Advisory Council on Women's Issues has done during the last year on issues of economic and social importance to women.

The council held a three-day conference in October entitled Tomorrow's Women: Beyond the Rainbow. Working with the school boards and private schools, the council brought together nearly 500 grade 11 female students from across the province. The council used the conference to hear the views of young women as well as to provide them with information that will help them make realistic choices for the future.

I was delighted to be present at that conference and made a speech that drew the attention of the member for St. George (Ms. Fish).

Mr. Chairman: All your speeches draw the attention of the member for St. George.

Hon. Mr. Scott: Right.

The Ontario advisory council is holding regional meetings across the province to hear the views and concerns of women throughout Ontario. During 1984 and 1985, meetings were held in Windsor, Dryden and Sudbury. At those consultations, many presentations were received from women's groups. In Dryden, the council sponsored a forum on women in the north in co-operation with the Northwestern Ontario International Women's Decade Co-ordinating Council.

The consultation was held in Windsor in November, at which presentations were received from high school students and women's groups. Kingston will be the site of a consultation this month and the council is planning a third such meeting in March. These regional views are regarded by the advisory council as a valuable means of hearing the views of Ontario women.

The council also hosted a two-day public conference in Toronto on Women and Health. A keynote speaker and eight panels examined women's health issues, speaking to a total of about 400 people from across the province. Participants included health professionals, civil servants, health administrators, health activists and the minister.

Through its regional representation, programs such as this and meetings across the province, the Ontario advisory council continues to advise the government, consult with women and educate the public on issues of particular concern to women.

As we move into the new year, we do not intend to let up our commitment to assisting the women of Ontario to achieve true equality. We recognize the prime importance of economic equality. It is undeniably true that most issues of concern to women are economic in nature.

The women's directorate wrote a background paper entitled Toward Economic Equality for the Women of Canada: from Principles to Action, which was presented by the Premier (Mr. Peterson) at the annual first ministers' conference in Nova Scotia on November 28-29, 1985.

This background paper expresses Ontario's clear view that Canada must move beyond principles and policy resolutions to concerted action by federal and provincial jurisdictions alike. The paper outlines details of a six-point national program which we believe will, if adopted, pave the way to economic equality for women nationally.

The program we proposed urges that these steps be taken: a joint public educational campaign be launched geared to youth, which would positively influence the attitudes of our youth towards the new economic realities, particularly with regard to the new technological age; a national media campaign promoting small business formation be undertaken; a comprehensive training access policy for women be established; personal income tax provisions relating to child care be reassessed; and an annual report on women in the economy be prepared as a joint federal-provincial undertaking to assess progress on a national basis.

This new government is committed to action on behalf of the women of Ontario. The efforts of the women's directorate as well as the Ontario Advisory Council on Women's Issues will continue to help for future opportunities.

The head of the women's directorate is sitting next to me, Ms. Glenna Carr, and there are a number of members of the directorate in the hearing room.

I have been in this portfolio for six months. We do not have a department; we have a directorate. I want to tell the committee that I have been literally stunned by the dedication, the enthusiasm and the willingness to work of the directorate and all its staff. I see a previous minister here and I am certain he would share my observation. The one thing I found when I came into this job is that women's issues are challenging, extraordinarily important and the staff we have in this directorate is determined and aggressive and puts a lot of pressure on the minister, for which he is grateful.

Mr. Chairman: The normal form of the committee from this point is to allow the official opposition approximately the same time in its response, if it so wishes, which would be approximately a half-hour maximum, and then to go to the third party, after which there may be questions that the minister may wish to respond to. That will leave precious little time for questions. In the interest of time, I urge as much restraint as possible in comments so we can get into this particular matter in as much depth as we can in the two hours allocated. I will turn now to Ms. Fish as the official critic for the opposition.

Ms. Fish: Mr. Chairman, you may well have anticipated some of my comments. I know that others on this committee, my friend Ms. Gigantes as well, have expressed concern about the limited amount of time allocated for a discussion of women's issues. Last year seven hours were allocated to the directorate discussions; this year there are only two hours.

4:30 p.m.

I appreciate the minister's opening statement, but in consideration of the time that is available to

us I will not take half an hour for an opening statement. The issues are serious enough to warrant getting into questions and discussion rather than hearing a lengthy presentation.

I specifically assume that there will be other opportunities and other forums to deal with pay equity. I would welcome some understanding from the minister in that regard; and of course this committee will be hearing witnesses on the question of a Human Rights Code amendment and conformity with the Charter of Rights and Freedoms.

Therefore, on that assumption, unless I get some signal from the minister to the contrary–

Hon. Mr. Scott: Perhaps I could just move on to that. To deal with equal pay in the private sector, there will be other opportunities in the consultation process to discuss the green paper. When the bill is produced, I have no doubt it will be referred to committee, but I do not intend to preclude the right of anybody to deal with that question here.

Whether there will be a formal activity or a formal forum, I cannot say. The estimates of the Ministry of Labour will provide the opportunity to deal with equal pay in the public sector because that is the responsibility of the Minister of Labour (Mr. Wrye), so there will be that forum.

Ms. Fish: My concern is that time is wasting and I am trying to focus in on a couple of areas for which there is no possible alternative forum.

Therefore, let me begin by joining with the minister in congratulating the staff; a fine staff they are and a fine directorate it is. I think it is fair to say that a directorate that has a broad overview responsibility, probing policies across all of the line ministries, is extremely important as a valuable source of advice to a government, and an extremely important and valuable conduit for the women of this province to have women's issues tested and raised against all of the line activities across the ministries.

As the minister is aware, that was precisely the thinking of the Conservative government, with which I was proud to be associated, in establishing the women's directorate in the first instance. I am delighted that in the main the activities the minister has noted have been solid continuations of many of the activities begun by the previous government.

We stand in good stead, not only in the dedication and activity of the staff but also, and credit is due, in the initiative shown by my former colleague, Robert Welch, in initiating the extensive consultation process that has proved to be so successful and is now being continued, among other things.

In part by my own work and in part by the statement of the Attorney General, I am put in mind of the problems of third-language and minority women. Whether we are talking about pay equity, family violence, custody maintenance orders or family law reform, as we have done, or Charter of Rights compatibility provisions, women's health issues, open doors programs or role modelling, the range of issues have a particular complexity when we look not simply at that classic, average, Canadian woman–fluently English in our predominantly English-speaking areas and fluently French in our French-speaking areas–but also when we consider the background, the particular prism if you will, through which the minority woman, whether new immigrant or here for 20 years or a couple of generations as a racial or third-language minority, must view a society and society's options for her.

I raise this because it speaks time and again to the need for fine-tuning and an extension in almost every area touched on by the Attorney General's opening statement and by the office of the Ontario women's directorate.

For example, when we are dealing with family violence, we now have the Zenith line for emergency calls and some reference to a safe house, shelter or hostel, as necessary.

I raised a question some time ago in the Legislature, and I was sorry about the Attorney General's response at the time, which was a little dismissive. I think the question was quite legitimate: how do we deal now, in the next step, with those who cannot speak English or French? How do we reach out to those whose cultural and religious foundation is built on the premise of patriarchy and of a particular position of the man in the family, compounding all the knowledge we currently have about women and women's roles, particularly for those minority women?

The same questions can be raised with respect to the advertising that began as the Break the Silence pamphlets and posters, and now has been extended into the broadcast media. How do we reach out, not simply in the advertisement itself, but also beyond, directly into the communities where the women who do not have the language that is commonly used, who do not normally find themselves in discussions and who do not attend classes can none the less have their doors opened so they know there is a place to go, a safe place?

Similarly, a question arises when we look at role modelling and the open doors program. I

would like to know what specific initiatives and steps have been taken. Role modelling is generally important when we speak about opportunities for girls and young women to look at different careers, and prior to that at the question of course or class choice. How do we solve the problem of the added anchor around the feet of newcomers, racial minorities or those who are not comfortable in our languages? How do we ensure there is a special reaching out to those girls and young women as well?

I come back to noting the opportunity that presents itself for a society so very new in its variety, richness and diversity of origins. This very newness means a different challenge is presented to us in reaching across what are not simply socially accepted mores that we can break down in a changing society. We are beginning to touch on the clashes of culture and religious-based positions within a society.

4:40 p.m.

I think that is a different kind of challenge. I would be particularly interested in knowing what specific steps have been taken by the directorate in that area.

Women's health issues are a similar question, but not exclusively so. I was very pleased with the coming to fruition of the long-planned conference on women's health issues and with the work the directorate has done over time in raising questions on these issues. I am interested in knowing the steps that are being taken by your ministry or the Ministry of Health in dealing with a couple of specific areas that seem to touch women rather more than anyone else.

The first is the problem of alcoholism and of chemical dependencies generally. I am sure you are aware that as a general pattern, women come to such dependencies much later in life than men. Most studies indicate that an apparent major cause of such dependencies is often related to gynecological or obstetrical problems and/or experiences.

The opportunity to reach out and deal with these women and assist them in moving away from chemical dependencies clearly involves the medical profession, outreach programs, communication and a number of other things. I am specifically interested in the actions taken in this area. I am most interested in the degree to which there has been an outreach to native women in northern and rural areas who have chemical dependency problems, and to those who are in minority language circumstances.

The second women's health issue that concerns me greatly is on a related matter. I am interested in understanding whether it has been raised, and if so the direction in which corrective steps are being taken. I noted that one source of chemical dependency is obstetrical and gynecological problems. One source of obstetrical and gynecological problems is the question of abortion and the issue of access to clean, safe, timely abortion procedures wherever a woman may live in the province and whatever age she may be.

The minister will be aware that there has been a decrease in the number of therapeutic abortion committees in hospitals across this province, which raises the question his own leader raised about the issue of access. Since the question continues to be one of particular importance, with an overlay on language problems and rural or isolated communities, I welcome an understanding of the initiatives the minister has taken in this area.

Mr. Chairman, I have been called away on urgent business. If you will excuse me, my colleague the member for Don Mills (Mr. Timbrell) will carry on for me.

Mr. Chairman: Is it acceptable to the committee to have Mr. Timbrell continue? Ms. Fish has about 15 minutes remaining.

Mr. Timbrell: Mr. Chairman, since I am filling in the breach, as it were, I suggest we move to Ms. Gigantes's remarks and leave sufficient time for questions, of which I have some.

Ms. Gigantes: I appreciated the minister's outline of programs that come under his responsibility as minister responsible for women's issues. I would like to give a small backdrop to some of the questions I want to raise later by thinking out loud about what has been happening about women, about their role in society over the past one to three decades in Ontario, as well as in Canada and other parts of the world, and about how that relates to how we are trying to advance the equality and quality of life for women in Ontario.

We are doing it currently through the efforts of the minister responsible for women's issues acting through two major bodies, often in a co-ordinating role. When we look at the legislation coming before us through the standing committee on administration of justice from the minister in his roles as minister responsible for women's issues and Attorney General, we find that a great many directly affect women's lives. There is Bill 14 on support and custody, the Change of Name Act, the Vital Statistics Amendment Act and the Family Law Act. Presumably there will be two bills on equal pay

for work of equal value. There are also a number of items in Bill 7 that relate to the status of women in Ontario.

I think it would be useful for us to reflect on why it is the Attorney General who is called on to co-ordinate the initiatives we are looking for in promoting the quality of life for women in this province, and to ask ourselves some questions about how satisfactory that is going to be in the next while.

Going back a few years, women have struggled to change their role in society. Sometimes they struggled because they had to. The world around them changed in ways that meant they had to. When I look back over that period, I also see a great many indications that as women tried to prepare themselves to meet the world as they found it–it has been a changing world for women–often they saw the rewards for the goals they set for themselves withdrawn, even as they extended themselves to reach those goals and to get those rewards.

If we go back to the 1950s, a period when family income in Ontario, Canada and most of the western world was rising quite significantly, most women worked in the home and most of their preoccupations had to do with the financial struggle that existed for them as the persons responsible for children and family. When family income began to rise during the 1950s, for a lot of women there was finally a glimmer of light in what had been a financial tunnel for the life of the family, something over which they agonized a great deal.

Even 30 years ago, it was a hard life for women in Ontario. Most women had three or four children. Families were not what we call upper income families these days. Women worked very hard emotionally and physically, often just to scrape together food and clothing for their families in a battle that seemed to go on endlessly.

4:50 p.m.

I well remember my own mother and how hard she worked. Even for women like my mom who had a good education, there were not many jobs. There was not a social consciousness that it was appropriate for women to take jobs, particularly if they were married and most particularly if they had children. The jobs that were open were traditional jobs, even for women with education. They were in teaching, retail sales and secretarial work.

I can remember my mother saying to me when I graduated from university: "I wanted you to get a university education, because then you could be a high-class secretary. You would meet a rich man and be able to marry well." My mother was by no means an unquestioning woman. She had a lot of spirit, a lot of spunk and a good education. She was pretty tough. However, that was her view of what her eldest child, a daughter, could hope to aspire to. That came out of a pretty tough background. Those were the realities.

The message the daughters of the 1950s got from their mothers was a mixed message, "Get an education and develop yourself, but your life is going to be your marriage." We found trends beginning in the 1950s that were to affect us to this day. I put to you that we have been dealing with them recently in the Support and Custody Orders Enforcement Act and the Family Law Act. As family income grew during the 1950s, it began to produce a change in the view of the family, mainly from men's point of view.

As their income rose, men began to feel a bit of financial elbow-room. It was from them that we had the first initiatives for changes in family law. They wanted easier divorces. Some of my predecessors in the New Democratic Party staked their claim on that issue in the federal Parliament and held out until they got it. A whole industry collapsed as the divorce law changed. We had had an industry that had been devoted to proving sexual infidelity or faking it well. That whole industry disappeared.

Divorce became easier and women could now be left behind more easily, with social acquiescence. Certainly, women had been left behind before, but now through the social system, we legitimized easy divorce and the pressures on women began to grow in a sense. When they were divorced, they were left behind with few protections financially or emotionally for themselves or for the children involved.

We now call the mid-1960s the era of the feminine revolution, or fem lib or whatever, but in fact women had been forced to think of themselves in a different way. I think the women we call women's libbers were simply people who were thinking about the realities of women's lives in the social setting. The more thoughtful of them were realizing that women's lives were changing whether women wanted those changes or not.

Women began to realize that they were not going to go through life, and they could not go through life, being a daughter, then a wife and then a mother. It was not safe to assume that any more. We have seen that reality come true for hundreds of thousands of women and for the children for whom they have responsibility in

this province, and indeed, right across North America. I suppose the same kind of law exists in Europe, although I am not familiar with the statistics there.

If I look at the statistical difference in single-parent families in the federal riding of Ottawa Centre, noted by Statistics Canada between 1971 and 1981, it is breathtaking. In 1981, 17 per cent of the families in Ottawa Centre were single-parent families, and there are more now.

What has happened to women during that period in terms of their own view of themselves and their role in society has been in some ways a disappointment to women. It behooves us to think about that. There have been a lot of hopeful breakthroughs in the situation of women. For example, if women could have the level of education required to cope in a modern industrial society, then the hope for some form of independence later on, even when they were carrying out the roles of daughter, wife, mother, and perhaps widow or divorcée, would be realizable.

However, we have seen that women are now as educated as men and still are not able to compete with men in the work place for a variety of reasons, as the minister has suggested. However, some of those reasons are things we have not talked about yet today, at least not to the depth to which I think we need to address them.

We saw during the 1960s the promise that women would be able to control conception and that, therefore, as they got higher levels of education, acquired positions in the paid work force and gained experience, they would at least be able to plan when they had the children they wanted. That, too, has proved something of a misplaced assumption. Some of the methods of birth control that we have are highly questionable, and some of them have proved downright dangerous. I put it to you that women since the 1960s have been the subject of an enormous reproductive experiment with respect to how we have adopted questionable birth control methods.

We still use them for want of better ones. It does not profit private companies to invest in better, more adaptable, safer, more practical methods of birth control. Women are in the strange situation now where, if they have an unwanted pregnancy, it is even less forgivable than it was in the past, because we live with the assumption that women can control conception, when in fact thousands of women find to their great distress that it is not easy and often fails.

We have also found that, as women entered certain kinds of professions looking for status, career advancement and the economic equality we have all said could be reached if women tried, many of the areas in which they have been encouraged to train themselves or to seek employment have become downgraded. Now we have a surfeit of lawyers just as women are flocking into the field, and newly entering lawyers can expect to spend a long time before they get a decent wage, particularly if they have to live on the peanuts we give them through our legal aid system. Women lawyers practising in family law are living on the legal aid system. That is one kind of example, but there are many others.

With respect to the traditional kinds of work that women have undertaken, we have watched the service industry offices be increasingly–there is no appropriate word for this–taken over by high tech. The kinds of jobs women used to enjoy and in which they were treated like people, such as that of telephone operator, have now become some of the most gruesome production line jobs that exist. They are working in a clean atmosphere, perhaps, but apart from that, the strain and stress of being a modern-day telephone operator are close to the kind of thing one would invent for lab stress tests on animals.

5 p.m.

We have seen women try to adjust to the need to keep their feet in the work force and keep up their experience and training by taking part-time jobs. The figures the minister presents to us when he gives us the average rates of pay in the private sector are not real, and I am sure the same thing is true in the public sector. Those are not the average rates of pay; they are the average rates of pay for full-time jobs.

If we are going to talk about the average rates of pay for females compared with those of males, we have to take into account the fact that about 40 per cent of the women in our work force–I have forgotten the exact figure–are working part-time. You know the wages they are working at. They are not getting benefits or building up pensions. That whole field of work is something that we have to start taking seriously when we talk about women's real status and level of compensation in the Ontario work force.

Before I go off into a long philosophical discussion, I would like to suggest that if we have learned something in the past 30 years it is that there is a difference between men and women, as the French used to say, and I am sure the Greeks must have had a word for it too. The difference is

that women have children. Women, on the whole, choose to have children. They choose to have fewer children than they did when they had less control over when they conceived and how often they conceived.

We are not looking at women in the whole sense when we are approaching women in the various kinds of programs that we have to consider in a legislative function. We need to spend more time thinking about what has happened in 30 years with women in modern society. Women want to have children. They do not get much help having children. Their economic situation and their ability to cope when they have to raise children independently, without the help of a spouse or a partner–and that is increasingly the case–is something we have to look at as a whole. It is going to keep on happening.

When we address family law legislation and maintenance enforcement legislation we are dealing with part of that. We honestly have to look at child care as something besides a luxury. We have to start looking at why women end up at the bottom of the heap just because they have kids. I suggest to you that the undervaluing of women in the ways we can measure it reflect our undervaluing of children.

When you get right down to it, that is the problem. If we truly valued children and truly cared about how children were raised and about good support systems for the people who have the responsibility for raising them, then we would be doing an awful lot more for women. If we were doing that, we would be answering one of the real wants that women would express.

You do not hear women out clamouring for this program or that program or whatever we call it this year. All those are good efforts and we need to do them. However, if we managed to put our minds to figuring out how better to have our society give recognition to the value of children, we would really meet the needs of women in Ontario in an associated way and in a way that is very powerful and important to women. I hope we will do more of that in times to come.

I have some specific questions I would like to raise when we have the opportunity, Mr. Chairman. I thank you for that chance to say a few words.

The Acting Chairman (Mr. Pierce): Does the minister wish to respond to any of these comments?

Hon. Mr. Scott: I just want to thank both critics for their participation and make one or two observations.

Ms. Gigantes's highly reflective and useful discussion to a very large extent parallels my own. I accept the challenge she raised, which is essentially, "Why is an Attorney General doing this?

There are reasons for that, which she indicated parenthetically as she went along when she used an expression that I do not think I had heard for five years, "the status of women." It conjured up Senator Florence Bird and the Royal Commission on the Status of Women in Canada.

At the beginning of the process, with the honourable member's generation–if we can take one stage of the process as having commenced in the 1950s or early 1960s–the status of women tended to be a legal-political inquiry, although these categories are not fixed. It was not a happy home, but it was natural that those questions got dealt with in courts and in legislatures.

The initial process by which women began to assert their status or their claim to equality through the efforts of Senator Bird and others started in the 1950s and 1960s. It was natural that Attorneys General or lawyers would be associated with that question. There is much to be said against lawyers and certainly something to be said neutrally on the subject of judges. That was, however, the natural forum in which women began to assert their status claims.

We have not finished with that exercise, and the work of the committee next week will carry it a little distance further; perhaps not far enough for my friend, but we will move those stakes on. There is much to be done.

The focus has now changed. We are now looking at the economic realities of being a woman, which is a different thing from what we looked at before. You can contrast the format, subject and territory of the Bird commission report with that of Judge Rosalie Abella's report from the Commission of Inquiry on Equality in Employment. You will see two different focuses.

Increasingly the focus for women will be economic, not only because of their needs but also because of their entitlement as members of the community. Increasingly it will be more natural for a Treasurer to be the minister responsible for women's issues, or some such person, as the focus becomes increasingly economic.

The other reality we must confront is that while women's claims to status, if not fully granted, are at least generally recognized now by legislators, politicians and judges, women's claims to economic and other kinds of equality

are, in my opinion, not recognized by legislators and politicians by and large.

We will have an interesting occasion next week on a matter that is of interest, if not of cosmic importance, to assess to what extent we really believe in equality. This is the matter of the exemption with respect to sports, subsection 19(2) of the Human Rights Code. I will be fascinated to hear the views of members of the committee on that question. If we have difficulty dealing with that question in the context of sports, we are going to have an awful lot of difficulty dealing with it in terms of equal pay and a whole host of other important economic questions.

The women's issue question that we discuss in this short two hours is going to be dealt with in a fundamental, philosophical sense when we come to Bill 7. I look forward to that exchange.

The Acting Chairman: Do we have any questions of the minister?

Mr. Timbrell: Just on that last point, is the Treasurer (Mr. Nixon) a member of the cabinet committee?

Hon. Mr. Scott: Which cabinet committee is this?

Mr. Timbrell: I understand you have had a committee struck to deal with women's issues.

Hon. Mr. Scott: No. There is an interministerial committee to deal with pay equity, and his ministry is represented on it. There is no cabinet committee on women.

5:10 p.m.

Mr. Timbrell: You have not struck such a committee? I understood you were thinking of that.

Hon. Mr. Scott: No.

Mr. Callahan: There was a very interesting point in Ms. Gigantes's statement, something I had never thought about. It was about addressing the question of looking after children. It is a very interesting thought and it does in many ways reflect on the equality and the advancement of women. It certainly struck a chord with me, and I hope it struck a chord with the rest of the committee.

Ms. Gigantes: I wrote a couple of notes to myself during the presentation of the ministry. I wonder whether I could have leave to run through a few questions. I do not know what page it will be in the minister's statement–in mine it is page 19–where he talks about the fact that the public sector has been able to provide a role model for the private sector with respect to closing the wage gap–this is the full-time wage gap he speaks of here.

I wonder whether the minister or somebody on his staff can indicate to us what those percentages would be if you folded in the real women, if I may use that expression, in the work force, including part-time.

Hon. Mr. Scott: The figures provided at the top of my page 19–it will be different in yours–are 62.3 per cent and 77.8 per cent. These figures are obviously for full-time. Is there any capacity to produce the part-time figures?

Interjection.

Hon. Mr. Scott: We could produce them; we do not have them. One of the difficulties is what is to be drawn from them.

Ms. Gigantes: That is what I am leading to.

Hon. Mr. Scott: What can be drawn from them is bare mathematics.

Ms. Gigantes: There are a couple of points I would like to make on that.

Hon. Mr. Scott: I am prepared to accept your proposition that they will be significantly different.

Ms. Gigantes: First, I would like to suggest that we certainly have not managed to prove the value of any model in the public service with respect to what has been happening in the private sector, because in the private sector the wage gap has widened in the last five or six years. So this model idea with respect to what the government can do in its own sector of responsibility having a great enlightening effect and significantly advancing women in the private sector really has to be questioned very seriously.

The second point I would make is that such a large portion of the paid female labour force is working as part-time labour. We know from Canada-wide statistics–I have not seen any comparable stats for Ontario–that the new jobs being created during the last year or year and a half have been almost exclusively in the part-time field, and they are getting filled up in a large proportion by women. This means that the women's unemployment rate is going down, but it does not really say very much about women's part in the economy.

If we are really looking to a first step forward in dealing with women's equality, then one of the prime items we should be addressing is raising the minimum wage, because it is the people who are engaged in part-time work who are going to be paid the minimum wage, and a number of categories of full-time work that are almost

completely filled by women are paying minimum wage. The minister is aware of all that.

I would suggest that we seriously look, and he can call upon his staff, at how effective we could be in improving women's economic status were we to propose a reasonable raise in the minimum wage. I know that in the Canadian Union of Public Employees contract, which is now in arbitration for hospital workers, there is a proposal by the union that the entry level pay for all hospital workers be $10 an hour. That would have a dramatic effect on the pay women get for work in hospitals and would, for the first time, bring them into equivalence with their male counterparts in hospitals, some of whom are performing work which I would suggest definitely takes less skill, responsibility and effort and is performed in even less pleasant working conditions.

Hon. Mr. Scott: I can give you this rough estimate. Of the Ontario female labour force, 26 per cent is working part-time. The figure that matches that is eight per cent of the male work force in Ontario working part-time. It would be possible, although I cannot do it now, to roll those figures and those incomes into both the figures that I have given you with respect to full-time women and full-time men in the public service or across Ontario to get the difference.

The reality is the difference is there; and the problem is, in the public service, first of all, how do we deal with it? The reality is that a number of strategies have to be developed. You know what they are. They are pay equity, which may take account of somewhere between 20 and 45 per cent of the differential, depending upon which expert you are sitting close to that week; and employment equity, getting women into other job classifications which will help take care of part of it.

It is anticipated that those two programs, fully applied, plus an educational and child care support system, should bridge the gap or bridge part of the gap.

Ms. Gigantes: And prorated benefits, too.

Hon. Mr. Scott: Yes. Now, the same exercise has to be undertaken in the private sector and the only point of the figures is that in the private sector, whether you roll in the part-timers or not, the gap is larger than it is in the public sector. There is a larger gap to fill. That is the only point of those figures and it is only in that sense that we say the government has shown a leadership role. The government has shown that by programs, quasi-voluntary in nature, the gap can be narrowed. It has changed radically in the public sector over the last few years.

Ms. Gigantes: Well, one would not say radically, but it has changed and it has changed positively.

Hon. Mr. Scott: Well, all right.

Ms. Gigantes: You understand my point, too, which is that to do this in the public sector certainly does not create an impetus for it to happen elsewhere. That is not reflected in our experience.

Hon. Mr. Scott: First of all, the private sector remains the private sector and there is a natural and proper reluctance to start issuing orders in the private sector. That is not to say that there will not be programs and plans and directions given with respect to equal pay, pay equity, minimum wage and all the rest of it.

It remains the private sector, which is responsible for producing what jobs we have in this economy. It is very important that government should show a leadership role in moving toward the kind of plans that we need with respect to employment equity and pay equity and illustrating that they can do the work without inordinate cost and loss of efficiency.

You may say, "Why is that necessary?" It is necessary because there must be, to a certain extent, a consensual element involved in this process if it is to take hold. The government is prepared to take on that role.

5:20 p.m.

The Acting Chairman: Mr. Cooke, was yours a question or a supplementary?

Mr. D. R. Cooke: It was a question.

The Acting Chairman: Supplementary?

Mr. Timbrell: Yes, I would like to ask a supplementary question. Ms. Gigantes may have been leading to this, and if so, I apologize for stepping in here.

What consideration are you giving to introducing new policies that will take the progress of recent years much further? I am thinking of policies that would require contract compliance for firms doing business with the government of Ontario to meet certain minimum standards that you would outline with respect to employment equity programs. What consideration are you giving to requiring all recipients of transfer payments, boards of education, hospitals and the list goes on, I will not recite them all, to doing likewise, to addressing some of the concerns that Ms. Gigantes and others have raised?

Hon. Mr. Scott: Before Christmas, the Premier made a policy statement on affirmative

action and we are moving to take it to the private sector. It involves the various components that you describe. As I say in the report, we have a reasonably elaborate affirmative action or employment equity program in the public service. We are developing equivalently elaborate programs in the transfer payment service.

The Ontario Hospital Association, as I said, is working closely with us, and we will be developing a staging process to bring this to the private sector; but I think, to a certain extent, it has to be sequential and has to go hand in hand with the other policy, which is pay equity.

Mr. Timbrell: Excuse me, but the Premier did not send me a copy of his statement. Could you perhaps–

Hon. Mr. Scott: We will try to get you one.

Mr. Timbrell: No. Perhaps you, as the minister responsible for women's issues, could walk us through the sequences as you see them, starting with the public service, the recipients of transfer payments and how you would envisage staging a change in the employment equity policies that the government requires recipients to have in place, and by when.

Hon. Mr. Scott: First of all, in what you call the quasi-public sector–schools, hospitals, those services–incentive funding has been given, and we have invited those agencies which are independently run, in the sense they are not agencies, boards or commissions of government, to utilize the incentive funding to develop programs in their own institutions for employment equity and to report to us on those programs. You look troubled.

Mr. Timbrell: I was not troubled. That is no different than what has been in place for some time.

Hon. Mr. Scott: I did not say it was any different. We have now taken it beyond government agencies, boards and commissions to a range of quasi-public institutions: hospitals, school boards, etc. We expect them to participate in that exercise, and they have been doing so, and to report. The next stage will be, presumably, to establish some standards and to implement them.

Mr. Timbrell: Standards for what?

Hon. Mr. Scott: For performance.

Mr. Timbrell: What intrigues me is that what you are describing was already in place for the most part. You may know that in the weeks and couple of months prior to your coming to your post we were looking at some very much more aggressive policies with respect to contract compliance for the public sector and for the private suppliers of goods and services to the government.

Hon. Mr. Scott: We did not regard it as obligatory to cancel any plan the women's directorate may have designed for you that had its virtues. What we have done in the last six months, in the quasi-public sector, we have made it applicable to 700,000 employees, who were not covered as of last spring. It is being extended. Transfer institutions are private institutions.

We are not ramming anything down their throats. We are asking them to develop their own programs, to set goals and to report with a view that when that has been done, we will see what progress can be made by that mode, then, if necessary, move to other modes. I think it is a useful program. I am sure you do too. You may have had something to do with it. It is being extended and we are moving in the same way to the private sector.

Mr. Timbrell: In your discussions with the Ontario Hospital Association or similar organizations–

The Acting Chairman: Mr. Timbrell, we have gone off the supplementary–

Mr. Timbrell: This is a supplementary to a supplementary but I will be glad to come back to it.

The Acting Chairman: Okay, if we can go to Mr. Cooke and then come back to it.

Mr. D. R. Cooke: I have a couple of questions. The first one may just be a housekeeping question. It has to do with transition houses which the Attorney General mentioned in his opening statement. I understand transition houses are actually funded through the Ministry of Community and Social Services, is that correct?

Hon. Mr. Scott: Yes, they are.

Mr. D. R. Cooke: Your ministry has no actual direct input into the education process that might go on in transition houses.

Hon. Mr. Scott: We are not a ministry. We perform certain consultative functions and certain policy development and co-ordination roles and public education. The development of line programs remains the responsibility of the ministries involved. For example, as you undoubtedly know, the government is developing a child care policy. In a formal sense, that child care policy will be provided by the appropriate ministry. This directorate is involved in making its views known about the shape of that policy. That is really our function.

Mr. D. R. Cooke: Then perhaps you could inform me on this. I spent a couple of years as

director of Anselma House, which is our local transition house. We used to have a problem with recidivism, the situation where the woman, of her own volition, would decide to return to a situation. We used to seek extra funding for an education process while she was in the transition house. That seemed to be an ongoing problem a couple of years ago. Can you update me on that?

Hon. Mr. Scott: I have been fortunate enough to visit transition houses in Renfrew, Ottawa, Hamilton and Windsor. The transition house is precisely that. I am not saying it should not be more, I am saying it is precisely that, a transition house. A transition from what to what? Transition, obviously, from a domestic setting where a wife is in jeopardy.

She goes into the transition house, then where does she go? You are quite right. Many women in those circumstances go home. I am not saying it is right or wrong for them to do so. In a large number of cases we believe that is dictated by economics. They go home because transition houses are not for them to live in forever. They have to go on.

5:30 p.m.

Many of these women have no employment qualifications, and even if they have they do not have jobs because of the job market or because they have been out of the job market for a particular period of time. Many have children and lack confidence in the judicial system. They go home because they do not want to fight over the children. I think Ms. Gigantes has seen those cases and we saw them while working on the Family Law Reform Act. In Metropolitan Toronto, they go home because frequently there are no apartments or rooming or lodging houses available where they could go if they had ordinary economic resources. Pressure on transition houses is extraordinary from one end, and pressure on women to return is real from the other.

Ms. Fish: What steps might be taken to deal with the noneconomic compulsion to return, the threat of continued physical violence? The minister is doubtless aware of the special police and security problems experienced by hostels, transition houses and so forth. At least when women are located in hostels, transition houses or have appropriate access to a secure place and to the kind of support that comes with those, they are able to deal with physical threats that often accompany their leaving. If they are going out on their own, as the minister has suggested, and living in a rooming house, apartment or whatever, that support and security are not there. What is the minister's view on that?

Hon. Mr. Scott: That is often true. I think the reality is that women who find themselves in this unfortunate situation have to depend on two things. They have to depend on the normal resources of the economy, just as men do. There has to be adequate housing at affordable prices. The superstructure of the community must be in place and working, which men as well as women need; then there have to be special programs.

When we look at housing in Metropolitan Toronto, we see women in transition houses who cannot get apartments they could move into with some safety, so are forced to go home. What do we do? One thing I think is going to be useful in the long term is extending rent control above $750. When there was a $750 freeze on rent control, people in a $650 apartment who could pay $800 or $900 and would like a more grand apartment did not move because they wanted to stay in a rent-controlled apartment. As a result, the bottom of the rental market was not opening up as people improved. We hope that will begin to happen with the housing policy. That is a problem that affects men and women. We have to deal with that in a number of ways.

With respect to safety, the reality is that both men and women have to look to the normal resources in the community to assure their safety: the police and criminal justice system. There has been a major obligation to educate those parts of the system to what is an appropriate role. As you well know, for many years–I hope it is over now–if one had a domestic quarrel and phoned the police, they would say: "That is a domestic quarrel. We cannot do anything about that."

There have been a major educational program and a series of directives that now require police and staff in this ministry to treat those allegations as matters for criminal investigation. Much remains to be done and resources are limited. In the end, police and the administrators of justice are going to be the guarantors of public safety. There is no other capacity to do it. I am not sure we would want to develop any other mechanism which might smack of a vigilante group. It is a problem, but I think headway has been made.

Mr. D. R. Cooke: The problem is huge indeed. Is the women's directorate looking for funding for ongoing counselling so that once contact is made with the transition house, even though the woman goes back to the situation she can continue with counselling? If options are available in her life, can she find out about them?

Hon. Mr. Scott: Yes. The transition house budget has been enriched to permit counselling. We hope that process will be carried on. There are problems when counselling becomes–what shall I call it?–legal rights counselling. An excellent group in London, not a transition house, provides legal counsel for battered women. On the other hand, a transition house in Windsor, Hiatus House, has provided legal counsel also.

There are a number of models like that across the province. Another model, in Ottawa, is the victims' program associated with the crown attorney's office. These are three different ways of trying to provide an access for women who are either battered or have difficulties or complaints to make to the criminal justice system, to provide an access with which they are comfortable and which will be effective.

The need cannot simply be served by doing it in Ottawa, Windsor and London. We hope to develop a program that will be available to women wherever they are in Ontario. We are looking at those ways to determine which is the most effective. My instinct, at the moment, is that the most effective way is based on the administration of justice model. It is not perfect and the case can be made that it begins too late in the process to be truly effective. It is certainly the most cost-effective.

Mr. D. R. Cooke: I, too, appreciate the history Ms. Gigantes carried us through with regard to affirmative action. It leads to questions that have been posed to me regarding the present. They are not questions I am particularly concerned about, but I ask the minister out of curiosity because they have been posed to me.

One family law lawyer suggested to me during consideration of Bill 1 that the fact the Attorney General is also the minister responsible for women's issues is a conflict. I am interested in the comments of the minister on that, as well as on a suggestion put to me that he should be concerned with men's issues.

5:40 p.m.

In the opening statement of the minister, he mentioned the women's directorate is concerning itself with a program to expand child care centres. I presume that does not mean preference is given to a plan for child care centres for mothers as opposed to fathers.

Hon. Mr. Scott: Let me deal with your first point. There are people who look for conflicts under every stone that can be rolled over. I do not perceive any conflict in my roles as Attorney General and being responsible for women's issues. I regard it as an opportunity. Theoretically, I suppose every minister who gets two assignments is in a potential position of conflict considering the possibility that two interests may accidentally converge. However, that has not happened to me, and I do not envisage it doing so. I do not see any problem. I would be interested to hear what your correspondent had in mind, because it certainly has not happened to me.

Presumably, a minister responsible for women's issues would do a good job if he had the right instincts about the problem and a bad job if he had wrong instincts. I am quite confident I have the potential–I may not be able to do it instinctively–to be a better minister for women's issues than some women I know. I think it is a question of attitude and not of gender.

To answer your question regarding child care, the women's directorate is interested in child care because of the large number of women in Ontario who are working and have children of various ages. The figure is in my opening statement. It is an extraordinarily high figure and it surprised me. Child care, whether it be provided by grandmother or a system, is an absolutely critical feature of those women's lives for a number of reasons.

One reason is mothers care about their children. Child care is not storage. Mothers who believe child care is storage are candidates for the children's aid society. Women are interested in quality child care; they are not interested in storage by and large.

The second reason is that it is an economic necessity. I am certain that working men who have care of their children have precisely the same interest. The reality is women make up the larger group. If I were to say: "Oh, well, this is a problem women share with men. There is nothing unique about it and therefore it is not a function of the women's directorate," Ms. Carr would ride me out of the portfolio.

Ms. Gigantes: She would have help.

Hon. Mr. Scott: And Ms. Gigantes would be not far behind, cracking the whip.

I do not always accept everything women's groups say. My function as minister is to make judgements on what is important to Ontario women and what their priorities and real needs are and then, whatever they are, go to work on them. They have concerns about income tax. You might say, "Look, Scott, income tax is not for you; yours is just a social ministry." I think it is for me if it is on the priority list reasonably constructed for women in Ontario.

Mr. D. R. Cooke: Supplementary to that–

The Acting Chairman (Mr. Pierce): Mr. Cooke, because time is limited and in fairness to Ms. Gigantes, who has been tolerant in listening, could we keep our questions short rather than editorial? I am sure others have questions as well.

Ms. Gigantes: I shall try to be brief. I cannot resist telling the minister that, given his views on child care and women's interest in it, I am dismayed that he was quoted–he can correct the report if he cares to at this point–as saying providing child care for everybody who wanted it would triple income tax. I hope he will not make statements like that any more.

Hon. Mr. Scott: I think what the public of Ontario has to do, although unpleasant, is evaluate its priorities, because the reality is that if we are moving towards quality child care, which is a right, not a luxury–and you made that point–then I do not know whether it is five, 10 or 20 years away. I think that is the direction in which any progressive government must move. We are contemplating a bill which is extraordinary. I cannot give you the figures because the matter is being discussed.

Ms. Gigantes: We should not get into a long debate about this. However, there are many ways of accounting for that bill, as you know.

Hon. Mr. Scott: Certainly.

Ms. Gigantes: You are in charge of the criminal justice system for one thing. I would like to know whether it is possible for the directorate and the ministry in general to provide an expenditure sheet.

Hon. Mr. Scott: Where was I quoted, by the way?

Ms. Gigantes: I think it was in The Globe and Mail. I will provide you with a copy of the article.

I am wondering whether we could be provided with a program-by-program expenditure sheet, which would tell us about the programs you have laid out for us. It would be very handy and nice and would be a good reference point for future detailed looks at the expenditures in this area.

When we get our estimates book, as one might expect there is no accounting for something that is going to come through the Ministry of Community and Social Services. However, we do not even have accounting for programs being run directly through your ministry in this area. I find that very unhelpful. I think we should get an accounting right down the line. We would then have something concrete to compare future developments with, particularly as we are heading into a budget. I would appreciate that.

I am wondering, too, whether a paper was developed during the consultation mentioned on my page 23 of the minister's statement, in which we have described for us the directorate's role in "the program design and negotiation committees which were established to develop provincial input to the federal government's announced $695-million new labour market strategy."

Is there any background information on the positions being taken in those discussions, or an understanding of how the directorate and your ministry feed into the federal government strategies in these areas, about which I have many questions?

Third, what is intended for the Ontario Advisory Council on Women's Issues? It has now struggled on for many years, with a budget which is very laughable in terms of the mandate it is given on paper. I think everyone that has had anything to do with the work of the council will probably agree that the work it has been able to do has been of good quality. However, it has been very limited by its budget. Is there an intention to change the organizational structure of the council, the manner in which it is funded or the degree to which it is funded? Can we have any enlightenment on the minister's intent about the advisory council?

Hon. Mr. Scott: As you know, the advisory council is substantially an independent body. It submits its own budget, makes its own choices and selects its own programs or initiatives. Once the budget has been fixed by government, it is to a very large extent master within its own house. Some new members were added to the council about a year ago, and there is a supplementary estimate here which increases its budget.

Ms. Gigantes: Where is that? I have missed that.

5:50 p.m.

Hon. Mr. Scott: I gather it is not shown. It is really part of the item which totals $1,499,500, it represents an increase of $211,000. It is not broken out in that item. In other words, during the current fiscal year this item was increased by $211,000.

Ms. Gigantes: I do not think that is correct. I do not have that.

Hon. Mr. Scott: It is $272,000.

Ms. Gigantes: What I have are notes on the estimates for the fiscal year 1985-86. It says the budget for the advisory council is $272,000.

Hon. Mr. Scott: Do you have a loose sheet like this?

Ms. Fish: It was on her desk. In any event, Ms. Gigantes's question stands because the supplementary estimates do not delineate it.

Ms. Gigantes: Are you telling me another $272,000 has been added?

Hon. Mr. Scott: No. I am saying part of the $1,499,000 shown in the supplementary estimates, if I understand it, represents an increase during the year of $211,000 plus $272,000, or a total of $483,000.

Ms. Gigantes: Yes. However, if I take this as the original estimate, am I correct? The original estimate was for a budget for the council of $272,000.

Hon. Mr. Scott: Yes.

Ms. Gigantes: So what are we talking about?

Hon. Mr. Scott: Yes, and $211,000 has been added.

Ms. Gigantes: There has been $211,000 added to $272,000?

Hon. Mr. Scott: Yes.

Ms. Gigantes: That helps me understand.

Hon. Mr. Scott: On the general question, the council, I presume–established by another administration–was established because of the importance of getting–

Ms. Fish: Excuse me, but I must interrupt at this point. My understanding, and perhaps I am misreading this, is that the supplementary estimates are also for vote 401, item 1, which is about the women's directorate. The Ontario advisory council is under vote 401, item 2.

Ms. Gigantes: Yes.

The Acting Chairman: Right.

Ms. Fish: Therefore, how can I find the increase of $400,000 you are referring to for vote 401-2 within the supplementary estimates of 401-1?

Hon. Mr. Scott: I am going to ask Ms. Carr to explain that for you and take a crack at what I was unable to do.

Ms. Carr: Part of the way through the current fiscal year the advisory council came to the minister with a request for some additional funding to cover initiatives it had in progress, such as the educational conference for girls which was run last fall. These were things it had committed itself to and which were under way. The council found it did not have sufficient funds in the original $272,000 in its estimates.

The minister went to the Management Board on its behalf and a supplementary amount of $211,000 was earmarked. The council was not sure whether or not it would expend all those funds. Therefore, it was identified as part of the $1,499,000 on the basis that the funds would be allocated to the directorate and then added to the council's budget through an administrative arrangement should it require the funds.

At the end of December, it had expended $100,000 of the $211,000. We are waiting for a budget report from the council to see whether or not it will need the other $111,000.

Ms. Fish: Can you tell us under what item it is contained within the directorate?

Ms. Carr: Item 401-1.

Ms. Fish: Where under 401-1? We have a series of categories. Can you show me where the reserve is for the council?

Ms. Carr: It is to some degree under salary and wages and also under services.

Ms. Fish: How much is under salary and wages?

Ms. Carr: It is a small amount, a few thousand dollars. The council had some reclassification of its staff.

Ms. Fish: I wonder, subject to Ms. Gigantes's agreement, if we can ask for the material to be forthcoming in written form to the members.

Hon. Mr. Scott: We can provide it.

Ms. Fish: That is commonly done in estimates when time runs out.

Hon. Mr. Scott: I would like to respond at this time to the more general question you ask. The sense I have is that the importance of the council and its creation arose out of the fact that the views of independent women, the views of the women in the community, were not being received or moved towards government. That is why the government established an advisory council, to be certain it was getting a sampling of women's views.

Ms. Gigantes: That is a kinder way of putting it.

Hon. Mr. Scott: That is the rationale for it and it has done much good work. Frankly, I am getting a sampling of women's views from a wide variety of women's organizations on the ground. They represent special groups of women or special economic interests. I would be very interested in the committee's view.

The council does much useful work and I would be very interested in hearing how the committee evaluates it. Many of the people on

the council are dedicated, hard-working, keen and anxious to take on assignments and play a role. Indeed, the chairman was here only a few moments ago–the other chairman. I am grateful for input from members of the committee about what we might be looking at.

Ms. Gigantes: I am sure we will be glad to get that to you.

The Acting Chairman We have time for one very quick question.

Ms. Fish: This is a request, given the time, for information to be filed. It is about the Legal Education and Action Fund. I would be interested in knowing what cases have been funded. In particular, I was given to understand LEAF was funding the Blainey appeal. I would like to know whether I am correct and, if so, how much of the cost borne by Justine's family in the court case is being offset by LEAF funds.

Hon. Mr. Scott: These are the wrong estimates, but I will try to get an answer for you. It is really the Attorney General's responsibility. There is an agreement with LEAF, as we announced, to report at intervals. I suppose the practical obstacle is that they could, theoretically, refuse to report. I will, however, be glad to get in touch with them, explain the circumstances and see if we can get an interim report from them about which cases they have funded.

They may not be able to answer the question precisely the way you want them to because a certain portion of the funding is attributed to administration, which they might not be able to allocate with respect to each case. We will do the best we can. I am glad to undertake to do that for you, wearing my Attorney General's hat.

Ms. Fish: Thank you. Any hat will do. It was mentioned in the estimates, even though you read the condensed version.

Mr. Chairman: With the committee's indulgence, I apologize for having to leave the chair. There was a press conference I had to attend. I have just now been able to get back.

We have not taken the votes on vote 401 yet, so I will call for concurrence on the estimates for vote 401, items 1 and 2.

Vote 401 agreed to.

Mr. Chairman: With regard to the supplementary estimates, which are on a separate sheet, we will call for concurrence on those estimates. Is that carried?

Supplementary estimates agreed to.

Mr. Chairman: This completes consideration of the estimates for the Ministry of the Attorney General.

Ms. Gigantes: I give my apologies in advance. I will not be able to attend tomorrow's meeting of the committee. I much regret it.

Mr. Chairman: I believe you are absent as well, are you not?

Hon. Mr. Scott: What are we doing tomorrow?

Ms. Gigantes: We are starting hearings on Bill 7.

Hon. Mr. Scott: I will be here at the opening.

Mr. Chairman: We will begin at 10 a.m. and run till 12:30 p.m.

The committee adjourned at 6 p.m.

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From the Ministry of the Attorney General:

Carr, G., Executive Director, Ontario Women's Directorate

Ontario

No. J-10

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Legislative Assembly of Ontario

Standing Committee on Administration of Justice
Estimates, Ministry of the Attorney General

First Session, 33rd Parliament
Tuesday, February 4, 1986

Speaker: Honourable H. A. Edighoffer
Clerk: R. G. Lewis, QC

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, February 4, 1986

The committee met at 3:38 p.m. in room 151.

After other business:

5:50 p.m.

ESTIMATES, MINISTRY OF THE ATTORNEY GENERAL (continued)

Mr. Chairman: I see representatives from all three parties here so we can get under way.

On vote 2001, resources development policy program; item 2, native affairs:

Mr. Chairman: Are there any further comments the Attorney General wants to make?

Hon. Mr. Scott: No, thank you, Mr. Chairman.

Mr. Chairman: Then we will proceed directly to questions the members may have. The critics have already responded with reference to this particular ministry. We have 30 minutes remaining of a total of two hours.

If there are any questions, we can deal with those now. If there are no further questions, we will simply close off the balance of these estimates and we can leave early, if that is your wish.

Mr. Pouliot: The record speaks for itself. The shortcomings, pitfalls and omissions of yesteryear are still predominant today. If we had anything specific, if in all honesty we could look at a commitment, there would be no further questions.

Hon. Mr. Scott: As I indicated to you last time, I am sympathetic to the observations you make about the necessity for a commitment. I can summarize the sense I have that we have made a major commitment to self-government negotiations which are going to be carried on through the commission.

We have a problem because, as I said, there is no medium to develop these negotiations to which I am committed with nonstatus off-reserve people. We are trying to develop a forum for these self-governing negotiations. The problem is one of representation, of which you are undoubtedly aware. For example, the Metis people, like all of us, have political considerations of their own and their organizations tend to flux. That is a problem and we are dedicated to trying to solve it. Not all these problems can be solved by us alone.

The second area is land claims negotiations. I hope the minister responsible for native affairs will be taking the lead in land claims negotiations, which will represent a significant change in the traditional pattern. We anticipate the minister, with the assistance of the cabinet committee on native affairs into which other ministries have input, will be able to move towards settlement of a land claim for the first time in Ontario history. It would be something, would it not?

Mr. Pouliot: Without forcing them into court as a method style.

Hon. Mr. Scott: Precisely. Part of the land claim settlement, in cases where those proponents of land claims have commenced proceedings, will involve a settlement of the proceedings. I do not want to go to court; I have been there. If we can do it, settlement is the way to do it.

The third major thrust is in program delivery. I have emphasized the importance, first of all, of seeing that native people get the advantages of government programs. That has not always been the case, for some of the reasons you gave and which I could replicate a number of times over. Secondly, having seen they get the advantages of the programs, I emphasize the importance of adjusting the programs so they are delivered in a way that is satisfactory to the native people. The third thrust presents a separate kind of problem.

The problems are mammoth. There can be few portfolios, with the possible exception of Health, that confront problems as historically intractable as these, but we are committed to trying.

Mr. Pouliot: Since the minister has made the commitment to carry the guilt—and the man at the top has to do so—one would still like to find, at the risk of repeating myself, a process that is somewhat a mandate but will serve the people. A process that is still embryonic in this day and age does not speak highly. It is a maze of confusion for native Canadians even to find out these things.

6 p.m.

They hire a band administrator by virtue and reason of his ability to explain to them how to file

forms. They have to know where it is at. It is like winning the lottery, nothing short of it. There is no precision. They have a sense of not belonging and they do not know where to turn. You have the responsibility, the duty, the mandate to give them a clear sense of direction–

Hon. Mr. Scott: I do not accept that.

Mr. Pouliot: –if the government means what it says. They trust you, but it is not going to last for ever.

Hon. Mr. Scott: I am grateful to have their trust and I hope to earn it. However, I do not accept the mandate you have imposed on me, to give direction, to lay out channels, to adopt processes. The one thing we have learnt from our history–and I share the guilt with you and everybody not of native extraction in this country–is that the desire of the white man to impose a process, a scheme, often well-intentioned, has been destructive.

In the 1950s, in the very far north outside Ontario, the best-intentioned people in the country confronting the problems of the Inuit decided what was needed was "education for tomorrow," I think it was called. To get education for tomorrow, centralized schools were created to which the native people were sent. A well-intentioned plan, conceived by the best technicians of the period in education, anthropology and all the other sciences, in the end was destructive.

What we have learnt from that and what Mr. Justice Berger, for whom I have a lot of admiration, teaches us is that native people must participate fully in selecting their own process and defining their own objectives. That is why his work on the Mackenzie Valley pipeline inquiry was so important–not that he decided anything; he did not decide anything. He simply said it is premature to decide because the native people of the north need time.

I am anxious to listen to what they say about processes, to accommodate them as far as we can and to move the thing along. But if you see me as someone with a grand plan, your concept of my role is not shared by me.

Mr. Pouliot: No, but I have heard you loud and clear when you have intimated you have that–not unique because no one has proprietary rights on those things– willingness to listen and to give consideration to the social and cultural aspects.

Hon. Mr. Scott: Yes.

Mr. Pouliot: Which is something that has failed before.

Hon. Mr. Scott: Yes. Everything has failed before.

Mr. Pouliot: We like the commitment we see, but we would like to notice more streamlining and a more determined and precise effort in solving specific social and economic needs plaguing the people of the north, the first Canadians. We want to wish you well, because you have a lot of work to do. Do not be afraid that they will not be able to digest and assimilate. You have a lot of latitude in which to move.

Hon. Mr. Scott: On the third point, the adjustment of programs, to which all Ontarians are entitled, to native needs and delivery systems, I hear what you say. Again, they are entitled to the benefits of these programs by virtue of the fact they live in Ontario. Because they represent an important cultural component, they are entitled to have their views about how the program should be delivered taken into account and accommodated in so far as we can. That will not permit a high school in every native community. There are some realities, regrettable though they may be, that must be faced. We hope to move in that direction.

We must always have a sense of precisely what the native people want for themselves, not in terms of general objectives because they want a better life–they know that and I know that–but in terms of their own political and social objectives. When that begins to come clear, we will not be devising a plan; they will be devising a plan. I hope we can accommodate ourselves to that plan.

Mr. Callahan: I do not know whether this is an appropriate place to bring up something such as delivery of the justice system. However, I hope that in the appointment of provincial court judges and in the justice system in general, a factor unique to native people–that is, that our ways are not their ways–will be taken into consideration. This should be not only with reference to the justice system, but also with reference to solving some of their other problems.

For instance, over the years I have practised, I have had occasion to act for a number of native Canadians. Penalties that might be appropriate to those of us who are not native Canadians, such as being incarcerated and so on, are not acceptable to them.

One thing I have learned in acting for them is that the restriction of their freedom in the traditional fashion is very debilitating for them, far more debilitating than it is to any of us. Within the framework of allowing them to decide their own destiny and bring forward programs

they feel are appropriate, I hope we will keep those things in mind because they are very important.

Hon. Mr. Scott: It is a very difficult issue because the Criminal Code fixes the range of penalties for most of the offences with which we are concerned. You will be familiar with the work of Mr. Justice Morrow and his predecessor, whose name for the moment escapes me, in northern Canada, in which there was carved out of the criminal justice system a penalty system devised specifically for native people. That effort to solve some problems, with the best will in the world, was not entirely successful.

One has to be very careful in asserting that the criminal law penalty for one group of Canadians is different to the criminal law penalty for another. Quite often the criminal law penalty for the poor is de facto greater than the criminal law penalty for the rich. For a multimillionaire a $5,000 fine may be a modest penalty; for somebody else it would be crushing. There is the capacity in the system to develop responses designed to equalize the system in its application. It is not, however, an unlimited exercise.

Mr. Callahan: What I was saying, particularly with regard to the question of who might sit in the provincial court level, is that at that stage it should be someone who is aware of the sensitivities. Like you, I think of Mr. Justice Morrow and I think also of the brother of one of our colleagues on the Conservative side who sat up in that area. He found out that unless you understand that entire tradition and the way things happen, you cannot possibly administer justice.

Hon. Mr. Scott: Sure. The justice of the peace program, just beginning with the appointment of two justices of the peace, and the appointment, I hope, in weeks or months of a third for the northeastern circuit is a good system. We not only get three justices of the peace acting as judges on the northern circuits, but the training program is wide open. We begin the program with 15 or 20 people, but along the way many of them decide they do not want to be justices of the peace because their personal time does not permit it and they have other things to do.

6:10 p.m.

They are encouraged to remain in the program because, if there are 15 people in a program from a series of communities and one becomes a justice of the peace for that circuit, that is fine, but there are also 14 people who have been introduced in a reasonably sophisticated way to the administration of justice system.

I was in Sudbury talking to the class the other day. When they go home, we ask them to play a part as the eyes and ears of the justice system, such as interpreting in the court, in law education in the community and in playing a role as leaders from an administration of justice point of view in their neighbourhoods. I think they will do that. We get one candidate out of the course, but we develop a core of people who are more at home with our system than when they began. If they are more at home with our system, they will be more sophisticated in the sense that they will be better equipped to deal with it, as will their neighbours and friends.

Ms. Gigantes: I was not present for the beginning of these discussions, which I regret, but in listening to the discussion this afternoon, two things strike me that also relate to this minister's responsibility as the minister responsible for women's affairs.

When I hear people talking about waiting to find exactly what the native community wants, I am reminded of the old phrase women used to be charged with, which was, "What do women really want?" Very often we can draw the same kinds of analogies for groups which have not had full access to rights in society, those analogies being that when society finally gets to the point of self-consciousness about it, it says to itself, "If only we understood what the group really wanted."

We had a witness before us this afternoon, Judith Snow, who was speaking to Bill 7 on behalf of handicapped people on access to normal elements of Ontario life for the handicapped. I heard her speak a few months ago in Ottawa, and she said she was always being asked what handicapped people wanted. She was talking to handicapped people at this meeting and she said: "We want what everybody wants. We want a job, a home, a place to live. We want friends. We want to be able to participate in society as other people do."

I think that is probably true of the groups we have slowly come to recognize over the past few decades as needing support in getting access to social organization, social power and social pleasure.

Hon. Mr. Scott: Could I deal with that point before you go on the second?

Ms. Gigantes: When we talk about native people and what they want, you said what they want is what we all want. They want jobs, education and so on. The only question left to ask

is how they want it. That is really what you are saying. You are not saying, "What do they want?" You are asking, "How do they want it?" I suggest to you very seriously that normally it is not too hard to find that out. At this stage in Ontario, native people have some experience in thinking about how to present to the rest of us how they want what they want, which is the same as the rest of us, and the cultural setting that so marks how they want what they want.

The other thing that struck me in this discussion was, much as in the discussion we had about your responsibilities as minister responsible for women's issues, that we have in front of us estimates which really do not tell us very much about the programs and of the effects on the group we are discussing.

During that discussion of women's issues, I asked that we have available to us soon, in the near future, estimates of how programs that are delivered on a wide basis are directed towards women, specifically, how much money is spent on those programs. All these accounts should be brought together in one place, in one briefing document, so that from now on when we come to these discussions, we have before us something that has some meaning in terms of the reality of the programs that are delivered, because most of them are not delivered through the Attorney General's ministry.

Hon. Mr. Scott: We do not deliver any.

Ms. Gigantes: You deliver some but they are a limited number, for example, the native court worker program.

Hon. Mr. Scott: There are some through the Attorney General, but none through the minister responsible for native issues.

Ms. Gigantes: I understand that. Much the same is true when we come to women's issues. However, it is possible to draw those figures together. I think it would be very helpful to members of this Legislature, when we are trying seriously to compare improvement and changes in the philosophy of program direction year to year, to understand exactly what those programs are that are directed specifically towards women on one hand and native people on the other.

Hon. Mr. Scott: I am not going to be able to help you on the second point, because native people, like women, are entitled to the benefit of every Ontario government program that is going. To collect them all would be to collect the estimates of all the line ministries and present them to you.

Ms. Gigantes: That is not what I had in mind.

Mr. Pouliot: We want to know about specific programs.

Hon. Mr. Scott: Let me tell you why I see it as impossible, and then you can make a suggestion if you have one. My responsibility for native people is to be their advocate, to see to it that any program to which they want access is made accessible to them, in so far as that is possible, and presented to them in such a way that they can take the benefit of it, whether it is a justice, health, education, language, cultural, tourist or natural resources program.

If we came to the estimates–and we have such a short time–and you said, "I have a list of six programs and I want to know what you are doing to make those available to native people," then I hope I could respond precisely to my mandate.

In the case of women, there are some focus issues, as there are in native rights too. We shall try to do that.

Ms. Gigantes: It would be very much appreciated.

Hon. Mr. Scott: However, I think it would be a helpful two-way street if, before the next estimates, the committee members who are interested in this subject could say, "Look, Mr. Scott, we would like to hear your views on what you are doing with respect to the administration of justice in this context or child care on reserves or education for native people in downtown Toronto." Then I could focus on these and either have an answer that satisfied or did not satisfy you.

Ms. Gigantes: I think that is the wrong way to be approaching it. With respect, it seems to me that from a governmental point of view within your government it could be a request that you make to ministers, who have developed and have responsibility for programs specifically directed towards one group or another, to gather that.

Hon. Mr. Scott: They are not.

Ms. Gigantes: Some are, and you are aware of them. Certainly when you talked to women's issues in your opening statement, you talked about a range of programs that are a responsibility of various ministries. If you can name them all for us, you can pull together accounts.

Hon. Mr. Scott: I cannot name them all for you.

Ms. Gigantes: You named enough so that I would have been quite happy if you had pulled together some accounts.

Hon. Mr. Scott: That is why I tried in my statement, which you missed, to focus on what I

judge to be–and I may have judged wrongly–the major areas of present concern for native people.

If I could just deal with your first point, I accept your–

Ms. Gigantes: That was my second.

Hon. Mr. Scott: I have dealt with it as best I can. It may be unsatisfactory.

6:20 p.m.

On your first point, I accept for the purposes of the discussion the distinction between what they want and how they want it. I accept that they want a shot at happiness, opportunity and all the rest of it. If that is all that is, there is no problem. The reality, though, is that native people want their programs and concerns addressed in a special way. I am not talking only about a special delivery mode, though they have views about that as well, but they want it delivered in a special kind of political system, generically called self-government. That is very important to them, and I understand that concern.

The native people, to myself and others, are beginning to flesh out what that may mean–not what it may mean to me, but what it may mean to them. There is a wide variety of views about what it means. I am not critical of the fact that they do not have a textbook they can shove of front of me and say, "This is how we want it all done," because they are in the course of a process. All I am very conscious of is that while we have our obligation, it would be so typical of our historical response for 118 years to decide what is best for them.

Historically in this country, we have decided wrong every time we have decided what is best for them, so I think the only hope is to allow time for this process to develop. When we get a handle on what self-government means for the Nishnawbe-Aski nation and what it means for native people in downtown Toronto, it may mean inevitably two different things. When they get a sense of what they mean by that, then it is our obligation to see the extent to which we can accommodate them.

For example, in downtown Toronto, self-government to some native groups and native people means a certain view of child welfare legislation; for some it may mean a separate children's aid society for native people. For other native people it may mean a reorganization of our existing systems. For other groups it may mean none of those things or something different. They are grappling with the systems they want.

It is their business, and I will do everything I can to encourage, help and participate, if I am asked. I have been asked, so I am glad to help if I can. It is, however, their business. When they decide, we must do what we can to accommodate ourselves to what they decide. It is a difficult process and it will not be finished in 10 years.

Mr. Chairman: We have about five minutes remaining. Could I ask the consideration of the committee in allowing Mr. Shymko to get on the floor for the last few moments? I acknowledge and he acknowledges that he arrived somewhat late due to other circumstances.

Mr. Shymko: I know that 15 minutes would not be a tragedy, but I certainly want to hear the minister's answers to some of the questions I raised earlier in the committee. Because of the circumstances of my being late, I do not know whether the minister answered any of these questions today.

Hon. Mr. Scott: I do not think I did. The question was why Ojibway is not permitted in the House. I remember that. I do not understand that it is prohibited. If anybody wishes to speak Ojibway in the House, I anticipate we may obtain an informal ruling from the Speaker that it will be permitted.

Mr. Shymko: If the minister recalls, I had a series of extensive questions in addition to that concern.

Hon. Mr. Scott: The second concern I propose to deal with was the assertion that I had failed to attend a convention of the Northwestern Ontario Metis Federation. I took it that you were critical of that. The reality is that the major Metis figure in northwestern Ontario of historic proportions is Mr. Paddy McGuire. He is one of the founders and for a generation has been one of the major figures in OMNSIA, the Ontario Metis and Non-Status Indian Association. He persuaded the previous governments and government to deal with OMNSIA, it being the Ontario umbrella group for Metis people across this province. The previous government and our government did so in good faith.

Mr. McGuire, for reasons compelling to him, has now withdrawn from OMNSIA and has formed the Northwestern Ontario Metis Federation. He has denounced OMNSIA and all its work as unrepresentative of the Metis people. There are therefore two organizations, both formed by Paddy McGuire and both of which purport to represent Metis people. Each takes the position that if one deals with the other, an indignity of some proportion is done, and each takes the position that one must deal exclusively with it.

When I was invited to attend his convention, I was anxious to do so, because Paddy McGuire is a wonderful Canadian. I recognized that if I went, however, the leadership of OMNSIA would be affronted, and if I did not go, Mr. McGuire would be affronted. We have indicated to him that when we get some sense of who represents the Metis people of the northwest in a real and continuing way, we will propose to deal with the organization the Metis have chosen. That is a reality of life in native affairs. You cannot deal with both; neither of them will permit it. "Permit" is too strong a word.

Mr. Pouliot: The issue is very complex, very ambiguous.

Hon. Mr. Scott: I know. It is very complex. I have met with Mr. McGuire since his convention. He understands that my inability to attend was not a failure of manners but was because of the difficulties involved. He is anxious to persuade the government that his organization is the major organization that represents the northwest Metis. To say I did not attend because I chose to be in Toronto is to take a completely different view of the thing. We were well aware of the convention and had to make some very difficult choices. We made them as best we could. We may have been wrong.

Mr. Shymko: I understand the delicate nature of making such decisions, but as the minister well knows, the Northwestern Ontario Metis Federation was formerly known as the Robinson-Superior Metis Association, which became a founding member of the Metis National Council, which is a federal body. It is a very important body. There is no doubt that although it intends to be considered as the sole representative of the Metis in Ontario, you will be faced with many meetings and ultimately with making a decision as to who represents the Metis of this province in the very important task of self-government and autonomy.

I do not know whether this was as a direct result of some of the questioning in committee, but the day following the deliberations in this committee, apparently Marc Le Clair, the executive assistant of the Metis National Council, and John Weinstein, the public policy nexus group representative, came from Ottawa to meet with your ministry. I met them that same day.

There should have been an initiative to meet with the representatives of that very important body. They had some statements with regard to the recommendations of the Royal Commission on the Northern Environment, which took some nine or 12 years to finally come out. I want to ask you whether you can address some of the concerns they expressed, mainly–

Mr. Chairman: Mr. Shymko, with regret, I have to tell you time has expired. I was hoping you would complete your statement and perhaps find a way for the balance of your questions to be answered by the Attorney General, either by way of formal letter or some other vehicle that you could negotiate together. In fairness to the other members of the committee, who agreed to sit only until 6:30 p.m., can I ask you complete your statement so that you get it on the record?

Then we shall have to close because our time has expired. That is not my decision. That is the House leaders' decision, and we are not allowed to go beyond the time frame that has been allocated for us.

Mr. Shymko: I simply ask the minister whether he feels the provincial and federal governments recognize the Northwestern Ontario Metis Federation as a political voice of Ontario Metis. My understanding from his answer is that he does not recognize it as a political voice of the Metis in Ontario.

Hon. Mr. Scott: No, that is not true. I guess I cannot respond with a question, but my question is, is it the posture of the Progressive Conservative Party of Ontario that we should not deal with the Ontario Metis and Non-Status Indian Association? The time is up, so I guess I cannot expect an answer.

Mr. Shymko: I guess we shall continue with questions and answers, maybe in a different forum, perhaps with correspondence, as suggested by the chairman.

Mr. Chairman: That is only one forum. The House is another forum.

I thank the members of the committee for their indulgence in allowing a bit of flexibility towards the end. As I have stated, we have gone over our time.

Vote 2001, item 2, agreed to.

Mr. Chairman: This completes consideration of the estimates of the Ministry of the Attorney General.

The committee adjourned at 6:32 p.m.

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